

# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

---

No. 826

FEDERAL TRADE COMMISSION, PETITIONER

vs.

RALADAM COMPANY

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WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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PETITION FOR CERTIORARI FILED DECEMBER 30, 1941  
CERTIORARI GRANTED FEBRUARY 9, 1942





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# **UNITED STATES CIRCUIT COURT OF APPEALS**

**FOR THE SIXTH CIRCUIT**

## **PETITION FOR REVIEW**

(Filed May 19, 1938)

Now comes the Raladam Company, the Petitioner above named, and respectfully says:

1. That it is a corporation duly organized and existing under and by virtue of the laws of the State of Michigan and has its principal office and place of business and carries on business in the City of Detroit, County of Wayne, State of Michigan, within the Sixth Judicial Circuit of the United States and within the jurisdiction of this court,

2. That respondent is a public body known as the Federal Trade Commission, organized and existing under an Act of Congress, to-wit: United States Code, Title 15, Sections 41 et seq.

3. That Petitioner's business, which it carries on at the place aforesaid, consists of selling wholesale druggists and jobbers a certain pharmaceutical preparation known as Marmola Prescription Tablets, which are manufactured for Petitioner in accordance with a formula owned by Petitioner and as a part of its said business and in the interest of promoting sales Petitioner advertises said preparation in various advertising mediums throughout the United States.

4. That Petitioner's said preparation, Marmola Prescription Tablets, are designed to be sold to and taken orally by human beings as a treatment for the reduction of

abnormal excess fat and are recommended by Petitioner only for such purpose.

5. That said tablets are offered for sale and sold by Petitioner as aforesaid in packages. On the outside of the container of each package, and also in a circular enclosed therein, Petitioner gives certain recommendations with reference to the use of the said preparation. Included in the said circular is the complete formula of the said tablets and various recommendations as to diet, exercise, and as to other matters concerning the use thereof.

6. That on or about the 22nd day of May, 1935, Respondent issued its complaint (Docket No. 2406) against Petitioner and subsequently caused the same to be served upon Petitioner, which said complaint was duly and seasonably answered by Petitioner, and that thereafter and on or about the 15th day of July, 1935, the Respondent issued its amended complaint and caused the same to be served upon Petitioner, which said amended complaint was likewise duly and seasonably answered by Petitioner. A complete copy of said pleadings will be filed by Respondent as a part of the transcript of the record in this court in due course.

7. That in said amended complaint the Respondent charged in substance and effect that the Petitioner was guilty of "using unfair methods of competition in commerce," and further charged that Petitioner's acts had been to the prejudice of Petitioner's competitors. Said amended complaint further charged in substance and effect that the alleged unfair methods of competition consisted of the publication by Petitioner of advertisements containing alleged false statements regarding Petitioner's said Marmola Prescription Tablets. In brief substance, the allegations of Respondent in its said complaint were that Petitioner represented in its advertisements that: (1) Thyroid

deficiency is a common cause of obesity or abnormal excessive fat; (2) Modern physicians use thyroid in the treatment of obesity; (3) Marmola Prescription Tablets are best suited to the needs of the multitude or to the average person in the average case; (4) Marmola Prescription Tablets are safe and scientific and may be taken without medical supervision; (5) The use of Marmola tended to restore the thyroid glands to normality; and (6) A table of average weights indicated normal weights; all of which alleged representations Respondent charged were false and untrue, and the said complaint further alleged and charged that Petitioner's advertisements were untrue in that said advertisements failed to disclose and set forth the converse of the statements which Petitioner made and failed to state certain alleged or supposed further facts to the effect that Petitioner's tablets could not be taken except under medical direction and advice and after consultation with a physician, and the complaint further alleged that Petitioner's advertisements had the "tendency and capacity" to mislead purchasers into the alleged erroneous belief that Marmola Prescription Tablets were a safe and scientific remedy superior to all other remedies for the treatment of abnormal excess fat and used by modern physicians.

That a true copy of said amended complaint will appear in the transcript to be filed by Respondent in this Court and Petitioner prays leave to refer thereto for a more extended and complete statement as to the allegations of the said complaint.

8. That in and by its answer to the said amended complaint Petitioner denied that it had been guilty of using unfair methods of competition in commerce; denied that it had made any false statements in its advertising; denied that the respondent had jurisdiction in the premises; denied that the proceedings was in the interest of the public and in

conformity with the statute; denied that it had any substantial competition or any competition entitled to be protected by the Act of Congress or the order of the Respondent acting thereunder, and denied that Respondent was in truth or in fact acting or attempting to act in the interest of or for the purpose of protecting any such supposed competitors, and alleged that Petitioner's statements and representations in its advertisements as to the physiological effects of its preparation were all matters of opinion as to which the Commission was without jurisdiction; that the Commission had prejudged the complaint, and that the proceedings was not in conformity with Article V of the Amendments to the Constitution of the United States, and further averred that all of the issues sought to be raised by the said complaint had theretofore been in issue in a certain proceedings in this Court entitled "Raladam Company, Petitioner, v. Federal Trade Commission, Respondent, No. 5429," which said cause had proceeded to a final decree, which said final decree was a complete bar to the institution or maintenance of said proceedings, and Petitioner prays leave to refer to its answer for a more complete statement of its contentions as therein made.

9. That thereafter the issues of fact and law raised by the aforesaid amended complaint and the answer thereto came on for hearing before an agent of the Respondent designated as a Trial Examiner, and proofs were introduced by the Respondent and the Petitioner.

10. That thereafter, and on or about the 21st day of January, 1937, the Respondent, Federal Trade Commission, made certain purported findings and conclusions wherein the said Respondent purported to find and conclude that all of the allegations of the aforesaid amended complaint had been sustained and the said Respondent, Federal Trade Commission, entered an order to cease and



desist, a true copy of said purported findings and conclusions and order to cease and desist being hereto attached marked "Exhibit 1" and made a part hereof.

11. That said findings and conclusions and the order based thereon are wholly void and destitute of legal effect for the reason that the Respondent Commission was without jurisdiction of the proceedings and without power or authority to make any of the said findings or any order therein, and for the further reason that they and each of them are not supported by testimony or evidence.

12. That said findings and the order based thereon are wholly void and destitute of legal effect for the reason that the decree of this court in the case entitled "Raladam Company, Petitioner, v. Federal Trade Commission, Respondent, No. 5429," was a complete bar to the institution or maintenance of the said proceedings or the making of such findings and order.

13. That the purported findings and the order based thereon are wholly devoid and of no effect for the reason that the said proceedings were repugnant to the provisions of Article III of the Constitution of the United States and Article V of the Amendments thereto.

14. That the said findings and the order based thereon are wholly void and without effect for the reason that they are repugnant to Article I of the Amendments to the Constitution of the United States.

15. That paragraph 3 of said purported findings of fact is erroneous and is not supported by testimony or evidence insofar as it finds (a) that Petitioner has any competitors or is in competition with persons therein referred to; (b) there exists any competitors of the class or character entitled to be protected by the Respondent's order; (c) that the proceedings was instituted by the Respondent for the purpose of protecting any of the persons, firms or

corporations referred to in said paragraph; or (d) that any fact exists giving the Respondent Commission jurisdiction of this proceedings.

16. That paragraph 4 of said findings of fact attempts to deal with matters of opinion and not matters of fact and the Respondent Commission is without power or authority to make any finding or conclusion with respect thereto, and Petitioner further says that the opinion of the Respondent Commission is erroneous and is not supported by the testimony or evidence insofar as it states that desiccated thyroid is the only ingredient in Petitioner's tablets which has any therapeutic effect or is efficacious in the treatment for the reduction of abnormal excess weight, and insofar as it finds that the taking of Petitioner's tablets does not result in stimulating the thyroid gland of the user.

17. That paragraph 5 of said findings of fact attempts to deal with matters of opinion and not matters of fact and the Respondent Commission is without power or authority to make any finding or conclusion with respect thereto, and Petitioner further says that the opinion of the Respondent Commission as expressed in said paragraph is erroneous and is not supported by testimony or evidence.

18. That paragraph 6 of said findings of fact attempts to deal with matters of opinion and not matters of fact and the Respondent Commission is without power or authority to make any finding or conclusion with respect thereto, and Petitioner further says that the opinion of the Respondent Commission as expressed in said paragraph is erroneous and is not supported by testimony or evidence insofar as it states that thyroid deficiency is not a common cause or a usual cause of abnormal excess fat or obesity, or that thyroid medication is not useful and efficacious in the



treatment for the reduction of abnormal excess fat, in the usual or average case.

19. That paragraph 7 of the said findings of fact attempts to deal with matters of opinion and not matters of fact and the Respondent Commission is without power or authority to make any finding or conclusion with respect thereto, and Petitioner further says that the opinion of the Respondent Commission as expressed in said paragraph is erroneous and is not supported by testimony or evidence insofar as it finds that any of the statements of opinion attributed to Petitioner in said paragraph are not correct and true.

20. That paragraph 8 of said findings of fact attempts to deal with matters of opinion and not matters of fact and the Respondent Commission is without power or authority to make any findings or conclusion with respect thereto, and Petitioner further says that the opinion of Respondent Commission as expressed in said paragraph is erroneous and is not supported by testimony or evidence insofar as it states that Petitioner's preparation, Marmola Prescription Tablets, are suitable to be taken only in a small proportion of cases or under any limitations except those set forth by Petitioner and insofar as it states that any of Petitioner's advertisements are false or untrue.

21. That paragraph 9 of said findings of fact attempts to deal with matters of opinion and not matters of fact and the Respondent Commission is without power or authority to make any finding or conclusion with respect thereto, and Petitioner further says that the opinion of Respondent Commission as expressed in said paragraph is erroneous and is not supported by testimony or evidence insofar as it states that desiccated thyroid does not tend to stimulate all the glands of the user thereof, including the thyroid gland, and insofar as it states that any of Petitioner's advertisements were false or untrue.

22. That paragraph 10 of said purported findings of fact is erroneous and is not supported by testimony or evidence insofar as it finds that Petitioner's advertisements were false or fraudulent because of the inclusion therein of a table of average weights based on age and height, and insofar as it finds that the table of average weights is not an accurate and correct table to be used by purchasers of Marmola Prescription Tablets as an aid in the determination of whether or not they are suffering from obesity.

23. That paragraph 11 of said purported findings of fact is erroneous and is not supported by testimony or evidence insofar as it finds that Petitioner's advertisements are rendered false or untrue by reason of the failure to state any of the matters therein set forth, or by reason of the statement of any of the matters therein, referred to. Petitioner further says that said paragraph purports to find and set forth various matters of opinion and not matters of fact, and the Respondent Commission purports and attempts to set forth the "consensus of medical opinion" with respect to such matters. Petitioner further says that the Respondent Commission is without power or authority to make any finding or conclusion with respect thereto and that the truth or falsity of Petitioner's advertisements cannot be lawfully or rightfully tested by the Respondent Commission according to the standard which it purports to adopt, namely, the standard of consensus of medical opinion. Petitioner further says that the opinion of the Respondent Commission as expressed in said paragraph is erroneous and is not supported by testimony or evidence and has no legal foundation insofar as it purports to find that any of Petitioner's advertisements are false or untrue by reason of any of the things stated or omitted to be stated in said advertisements.

24. That paragraph 12 of said purported findings of

fact attempts to deal with matters of opinion ~~and~~ not matters of fact, and Respondent Commission is without power or authority to make any finding or conclusion with respect thereto. Petitioner further says that the opinion of the Respondent Commission as expressed and set forth in said paragraph is erroneous and not supported by testimony or evidence.

25. That paragraph 13 of said purported findings of fact is erroneous and not supported by testimony or evidence.

26. That paragraph 14 of said purported findings of fact is erroneous and not supported by testimony or evidence.

27. That paragraph 15 of said purported findings is erroneous and not supported by testimony or evidence and is an attempt by the Commission to deal with matters of opinion and not matters of fact without any lawful power or authority so to do, and to capriciously choose that opinion which best suits its purposes, and such choice was made by the Respondent by reason of the fact that it has prejudged its said complaint contrary to the provisions and requirements of Article V of the Amendments to the Constitution of the United States.

28. That paragraph 16 of said purported findings is erroneous and not supported by testimony or evidence and is an attempt by the Respondent to deal with the matter of law as to Petitioner's plea or res adjudicata; that this issue is wholly and entirely an issue of law and that there is no controversy or question as to the facts with respect thereto; that said facts are all a matter of record in this Court and the attempt of the Commission to determine the issues raised by said plea as a fact is erroneous and void and of no legal effect.

29. Petitioner says that the said purported finding of

fact and each and every paragraph and subdivision thereof is erroneous, is not supported by testimony or evidence, and that Respondent Commission could not have arrived at the opinion stated therein except by a rejection by Respondent, which is wholly arbitrary and capricious, of the testimony of all of Petitioner's expert witnesses and some of Respondent's expert witnesses.

30. Petitioner says that Respondent's conclusions of law attached to its purported findings of fact are erroneous and contrary to law and in excess of the lawful power and authority of the Respondent.

31. Petitioner says that the order to cease and desist and each and every paragraph and subdivision thereof is not justified or supported by testimony or evidence or by the findings, is contrary to law, and is in excess of the lawful power and authority of Respondent.

32. Petitioner says that it has not at any time been guilty of the alleged unfair acts or methods of competition or any of them mentioned in Respondent's said findings and in its said order to cease and desist, and that the findings that Petitioner has been guilty of any such unfair acts or methods of competition, or any of them, are not supported by testimony or evidence and are contrary to law, and that the order to cease and desist should not have been made and entered against Petitioner, nor should any part thereof, and that said order and every part thereof is contrary to law and in excess of the lawful power and authority of the Respondent.

33. Petitioner says that the acts and things shown in the testimony that are claimed by Respondent to support the charges of the complaint above referred to and upon which the findings and the order of the Respondent were purportedly based, were not unfair methods of competition by Petitioner within the meaning of the Federal Trade



Commission Act, and did not authorize or empower Respondent to make and enter the order to cease and desist aforesaid, or any part thereof.

34. Petitioner further says that the said order to cease and desist violates the first Amendment to the Constitution of the United States.

35. Petitioner further says that the said order and each and every paragraph and subdivision thereof is wholly void and destitute of legal effect for the reason that it attempts to deal with controverted matters of opinion and not facts and is beyond the lawful power of the Respondent Commission.

36. Petitioner further says that neither the Respondent nor any member thereof was personally present at the taking of testimony, or saw or heard any of the witnesses testify at said hearings, and further avers upon information and belief that neither Respondent Commission nor any member thereof ever read the evidence adduced before the Trial Examiner upon said hearings or any portion thereof or any summary or condensation of the same, nor judicially weighed or appraised the said evidence and any part thereof, or acted judicially or quasi-judicially thereon, and further avers on information and belief that Respondent Commission delegated its duties and functions to subordinates and that the purported findings, conclusions and order are the findings conclusion and order of such subordinates, who have no power or authority to make the same, and Petitioner avers that the Respondent Commission was wholly without power or authority to delegate such functions to such subordinates, and that by reason of the foregoing the said purported proceedings of the Respondent were in violation of Article III of the Constitution and repugnant to the Fifth Amendment thereto.

37. Petitioner further says that the findings of the

Respondent Commission are not supported by the weight of the evidence and are therefore void and invalid in that the Federal Trade Commission Act hereinbefore referred to, insofar as it provided that the finding of the Commission as to the facts if supported by testimony shall be conclusive, violates Article III of the Constitution of the United States in that it purports to grant judicial power to a non-judicial tribunal, which said tribunal is neither the Supreme Court nor any inferior court ordained or established by the Congress.

38. Petitioner further says that the provision of the Act of Congress hereinbefore mentioned that "the findings of the Commission as to fact if supported by testimony shall be conclusive" if so interpreted as to require this court to enter a decree enforcing the provisions of the purported order of the Commission without weighing the evidence or giving any consideration thereto other than for the purpose of ascertaining whether there is some testimony to support the order and the purported findings on which the same is based without consideration of any other facts or circumstances or equitable cognizance and without this court considering for itself whether the conduct of the Petitioner is sufficient to warrant the entry of a decree of enforcement having the effect of an injunction issuing out of a court of equity and without the exercise of any judicial discretion whatever, is repugnant to Article III of the Constitution of the United States and Article V of the Amendments thereto.

39. Petitioner further avers that its property, assets and business are being confiscated and taken without due or any process of law by the acts and doings of the Respondent Commission contrary to the rights and immunities guaranteed to Petitioner by the Fifth Amendment to the Constitution and that the enforcement of the purported



order made by the Respondent Commission as aforesaid will further deprive Petitioner of its property and business and confiscate the same and that the Respondent Commission is without jurisdiction in the premises and the purported order is against the great weight of the evidence, and that by reason thereof Petitioner is entitled to the independent judgment and determination of this Court as to the facts upon which the order of Respondent purports to rest wholly irrespective of any claimed finding or determination of Respondent with respect thereto and that unless this court determines independently the validity of the said order, the said proceedings will be repugnant to the said Fifth Amendment and Petitioner's property and business confiscated without due process of law.

40. Petitioner further avers that Respondent Commission, under the guise of acting pursuant to the Act of Congress creating it, and under the guise of protecting alleged competitors of Petitioner from alleged and unfair methods in competition in commerce, Respondent Commission in truth and in fact is not so acting, but on the contrary is engaged in a partisan campaign to put Petitioner out of business and to likewise put out of business all other persons advertising and selling a medical preparation designed to be self administered for the purpose of treating obesity in human beings, and that the proceedings herein sought to be reviewed were commenced by the Respondent Commission as a part of its said campaign and for the purposes aforesaid; that Respondent Commission's real aim and studied purpose is to attempt to prevent the sale of so-called proprietary medicines intended to be self administered as treatments for obesity. Petitioner further avers that all of the claimed competitors of Petitioner are now and always have been, in the eyes of the Respondent Commission and those persons instigating the proceedings, and

in whose interest it was brought, as said by this court not only "on the same index expurgatorius as Marmola but that they are relatively disreputable" and the Respondent Commission before the issuance of its complaint aforesaid had proceeded against numerous of said supposed competitors and had either entered orders to cease and desist against them or by the threat of such orders had procured "stipulations" to so cease and desist; that said campaign by Respondent Commission has continued until the date hereof; that since the taking of the testimony herein Respondent Commission has pursuant to its said campaign entered orders or procured stipulations to cease and desist against the following persons and products among others named in paragraph 3 of its purported findings, namely: "Dr. McCasky's R. X. Tablets," sold by Dispensary Supply Company, New York City; "Slendrets," sold by Scientific Medical Products Co., Inc., San Francisco, California; "Germania Herb Tea Number 14," sold by the Drug Trade Products, Inc., Chicago, Illinois; "Dietene," sold by The Dietene Company, Minneapolis, Minnesota; and "Welch's Grape Juice," sold by Welch Grape Juice Company, Westfield, New York.

Petitioner further says that the Respondent Commission does not in all cases divulge the names of the persons proceeded against and that Petitioner is not able to ascertain with certainty the identity of the parties to all such proceedings and stipulations, but upon information and belief Petitioner avers that orders and stipulations to cease and desist have been made against all the persons named in said paragraph 3 of the findings who were engaged in the selling or vending of so-called proprietary or patent medicines, and Petitioner avers that if by chance there are any such persons or products so named who have not been so proceeded against by the Respondent Commission, it is

solely and only because the Respondent Commission has not as yet reached them in its said campaign.

WHEREFORE, Petitioner prays that a copy of this Petition be served upon the Respondent and that the Respondent be required to certify and file in this Court a transcript of the entire record of the proceedings of Respondent against Petitioner, including all the evidence introduced and testimony taken and the order of the Respondent, and that the findings and the order to cease and desist attached hereto (Exhibit 1) be set aside and held for naught and Petitioner be given such other and further relief as may be just and equitable, and may recover its costs herein expended.

**RALADAM COMPANY**

By Edward D. Hayes

Its President

Butzel, Eaman, Long, Gust & Bills,

Attorneys for Petitioner

(Verification in Usual Form)

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**FINDINGS AS TO THE FACTS AND CONCLUSION  
OF THE FEDERAL TRADE COMMISSION**  
*(Exhibit "I" to Petition for Review)*

(Filed Jan. 21, 1937)

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, on July 15, 1935, issued and served its amended complaint in this proceeding upon respondent, Raladam Company, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Edward J. Hornibrook and Harry D. Michael, attorneys for the Commission, before John W. Norwood, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Rockwell T. Gust, attorney for the respondent; and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearings before the Commission on the said amended complaint, the answer thereto, testimony and other evidence, and brief in support of complaint, counsel for respondent having failed to file a brief, although given an opportunity so to do, and having failed to appear at the time and place set for oral argument after due notice thereof; and the Commission having duly considered the same, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

### PARAGRAPH ONE:

Respondent, Raladam Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business located in the City of Detroit in said state.

### PARAGRAPH TWO:

Respondent is now and has been engaged for more than

five years last past in offering for sale and selling a certain medical preparation designated and described as "Marmola," which respondent has sold, during the time aforesaid, and now sells to various purchasers thereof located in the several states of the United States. In the course and conduct of said business, respondent causes its said preparation to be shipped from its place of business in the State of Michigan, or from the place of business of the company that compounds the same, to the purchasers thereof located in the several States of the United States other than Michigan as well as in the District of Columbia. Respondent's usual course of business is to sell its said preparation to wholesale druggists and jobbers who in turn sell it to retail druggists through whom it is sold to the consuming public. Said preparation, "Marmola," is sold by respondent and is bought and used by the consuming public for the purpose of effecting reduction in weight.

### PARAGRAPH THREE:

During the time above mentioned, other individuals, firms and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of medicines, preparations, systems, methods, books of instruction, and other commodities, articles and means designed, intended and used for the purpose of effecting weight reduction. Such other individuals, firms and corporations have caused and do now cause their said medicines, preparations, systems, methods, books of instruction, and other articles and means, when sold by them, to be transported from various States of the United States to, into and through States other than the State of origin of the shipments thereof. Respondent has been, during the aforesaid time, in substantial competition,



in the sale of Marmola, with such other individuals, firms, and corporations. Some of such competing products are sold direct to the consuming public while others are sold to wholesale and retail dealers through whom they are in turn sold to members of the public for their use.

Respondent's preparation is in competition with all medical preparations sold and used for reducing purposes regardless of whether such preparations are of the so-called "patent medicine" type or are pharmaceutical preparations which may be bought by members of the consuming public on their own initiative or on the prescription of a physician. Competing products include, also, the following: medical preparations which are used as adjuvants in the treatment of obesity, such as laxative salts; preparations sold and used for the purpose of effecting the lessening of the consumption of fat producing foods; and books of instruction on the subjects of diet or exercise, or both, intended and used for the purpose of effecting reduction by one or both of these means; in general, all those preparations, products and articles sold to and used by the consuming public for effecting weight reduction. Among such preparations, products and articles so sold and used are the following:

"Diet and Health with Key to the Calories," by Dr. Lulu Hunt Peters, a book on diet, published by Reilly and Lee Co., Chicago, Ill.

"Weight Control," by Dr. William Howard Hay, a book on diet published by The Hay System, Inc., New York City.

"New Health Era," by Dr. William Howard Hay, a book on diet, published by The Hay System, Inc., New York City.

"No More Alibis," by Madame Sylvia



of Hollywood (Madame Sylvia Leitner), a book on reducing by means of exercise and diet, published by McFadden Publishing Co., New York City.

"The Secret of Keeping Fit," by Artie McGovern, a book containing instructions for reducing by diet and exercise, published by Simon & Schuster, New York City.

"Jad Salts," manufactured and sold by Wyeth Chemical Co., Detroit, Michigan.

"Welch's Grape Juice," sold and used for reducing purposes by reason of its effect on the consumption of fat-producing foods, prepared and sold by Welch Grape Juice Co., Westfield, New York.

"Desiccated Thyroid," a pharmaceutical preparation, prepared and sold by Armour and Company, Chicago, Illinois.

"Tabloid Thyroid Gland," a pharmaceutical preparation, made and sold by Burroughs-Wellcome Company (USA), Inc., New York City.

"Thyrovarium," a pharmaceutical preparation made and sold by Burroughs-Wellcome Company (USA), Inc., New York City.

"Tabloid Mixed Glands Number 1," a pharmaceutical preparation made and sold by Burroughs-Wellcome Company (USA), Inc., New York City.

"Tabloid Mixed Glands Number 2," a pharmaceutical preparation made and sold by Burroughs-Wellcome Company (USA), Inc., New York City.

"Thyroxin," a pharmaceutical prepara-

tion made and sold by E. R. Squibb and Sons, New York City.

"U. S. P. Thyroid," a pharmaceutical preparation made and sold by G. W. Carnrick and Company, Newark, N. J.

"Kellogg Rational Treatment for Obesity," a preparation sold by F. J. Kellogg Company, Battle Creek, Michigan.

"C. C. N. T.," a preparation sold by F. J. Kellogg Company, Battle Creek, Michigan.

"Dr. McCasky's R. X. Tablets," sold by Dispensary Supply Company, New York City.

"Reducoids," sold by Scientific Laboratories of America, Inc., San Francisco, California.

"Slendrets," sold by Scientific Medical Products Co., Inc., San Francisco, California.

"Van Nay Tablets," sold by Bio-Medico, Inc., New York City.

"Germania Herb Tea Number 14," sold by the Drug Trade Products, Inc., Chicago, Ill.

"Stardom's Hollywood Dietade Number 1," sold by The Hollywood Diet Corporation, Chicago, Illinois.

"Eskay's Dextretts," sold by Smith Klein and French Company, Philadelphia, Pennsylvania.

"Dietene," sold by The Dietene Company, Minneapolis, Minnesota.

"Retardo," sold by The American Clini-

ical Laboratories, Inc., Flushing, Long Island New York.

"Eliphat," sold by Eliphat Laboratories, Detroit, Michigan.

Respondent, in its advertising matter, recognizes that competing products are not confined to those preparations or products of the same general character as Marmola by specifically advising and urging the use of Marmola for reducing, instead of the use of diet, exercises, purgatives, cathartics, salts, laxatives and other methods used for effecting reduction.

#### PARAGRAPH FOUR:

Marmola is put up in tablet form and is taken orally. The qualitative and quantitative formula per tablet is as follows:

1 gr. Extract Bladderwrack.

1-2 gr. Extract Phytolacca.

1-4 gr. Extract Cascara Sagrada—RX 87

Spec.

1-2 gr. Desiccated Thyroid.

16-1000 min. Oleoresin Ginger, Po. Saccharum Special.

3 gr. Calcium Carbonate Precipitated.

1-24 min. Methyl Salicylate.

1-24 min. Oil Anise.

1-24 min. Oil Sassafras.

Talc Brown.

Ivory Black

Aqua for Extracts.

Po. Burnt Umber.

Red Oxide of Iron.

Syrupus Simplex.

Lubricating Solution

### Aqua for Granulating.

Liquid Petroleum—colorless.

Directions for taking said preparation, as given by respondent for the purpose of effecting reduction, are as follows:

“Take one tablet after each meal and at bedtime with enough water to swallow easily.”

It is further directed by respondent that the taking of the tablets as above stated be continued until the desired reduction is attained, or until “weight comes down to normal,” or for “60 to 90 days—unless your weight has approached normal before that time.”

The active ingredient in said preparation which affects reduction is desiccated thyroid. Certain other ingredients produce a laxative effect, while others have little or no therapeutic effect. Desiccated thyroid is made from the thyroid glands of certain food animals. When taken orally, its effect is the same as that produced by an increase of the secretion of the patient's thyroid gland. This effect is to increase the processes of metabolism, or, in other words, the oxidation or burning of the tissues. Desiccated thyroid, when taken internally, acts upon the body tissues generally. Its action is not confined to fatty tissue. When this oxidation or burning up of the tissues exceeds that furnished and restored by the food that is eaten and assimilated, loss of weight results.

The taking of desiccated thyroid does not result in stimulating the patient's thyroid gland so that its secretion is increased. It merely supplements such secretion. It does not restore an inactive or under-active thyroid gland.

**PARAGRAPH FIVE:**

Most cases of obesity or excess fat are caused by incorrect eating habits, such as over-eating, poor selection of foods and improper combinations of fat-producing foods. In some instances, excess fat and obesity result from thyroid deficiency. There are also other endocrine types of obesity, as well as other cases due to pathological conditions. All such cases are described as endogenous obesity. However, such cases of endogenous obesity are only a very small percentage of the total number of cases of obesity. Authoritative medical opinion fixes this percentage at less than five per cent. It is impossible for the ordinary layman suffering from obesity to determine whether such condition is caused by thyroid deficiency. Generally speaking, desiccated thyroid is indicated in the treatment of obesity occasioned by thyroid deficiency, but it is usually only one feature of the treatment in such cases. Many physicians use desiccated thyroid in the treatment of some such cases, but in other cases of the kind they may not do so and do not do so on account of various pathological conditions that may exist which inhibit the administration of such a preparation. Only one qualified by training and experience can determine with any degree of certainty whether a case of obesity is the result of thyroid deficiency, and, if so, whether the physiological condition of the patient is such as to make it advisable for desiccated thyroid to be administered. Likewise, only such a trained person can determine the dosage to be given. A patient taking desiccated thyroid in any case should be observed and examined at regular intervals by one trained and experienced in such work to determine its effects and whether symptoms are apparent indicating possible harmful results or that the treatment should not be continued further. The ordinary layman treating himself or herself is not com-



petent to judge when resulting symptoms indicate harm or to determine whether they indicate that the treatment should cease. Among the bodily conditions where desiccated thyroid is inhibited, are various heart defects as well as kidney diseases, pregnancy and various abnormal and diseased conditions of the organs of the body.

#### PARAGRAPH SIX:

Respondent, in its published advertising matter circulated to and among the purchasing public in the various States of the United States, makes many statements which represent or imply that thyroid deficiency is a common cause or the usual cause of obesity or excess fat and that, if a person is overweight, it is an indication of thyroid deficiency and that thyroid should be taken for reduction purposes. Examples of such statements are the following:

“ Science has found that a great cause of obesity lies in a defective gland. That gland's secretion has much to do with nutrition. Its main purpose seems to be to change food into fuel and energy.

“ When that gland is weak, the secretion small, too much food goes to fat. Then the right way of reduction—the doctor's way—is to supply that substance from a sheep gland ”

“ Fat people, it was found, generally suffered from an under-active thyroid ”

“ A common cause of excess fat is an under-active gland ”

“ A great cause of excess fat has been found in a weakened gland. Now doctors, the world over, feed that lacking factor. ”

" Modern medical science has discovered a great cause of excess fat. It lies in a scanty gland secretion. "

" Many years ago medical science discovered that obesity—when an abnormal condition—is caused by the lack of an important element which the body normally supplies. "

" Excess fat in many cases is caused by a little gland that does not work well. "

" If you are over-fat, you probably have an under-active thyroid. "

Such representations and implications as contained in the above quoted statements are inaccurate and not true statements of the facts as hereinbefore shown.

#### PARAGRAPH SEVEN:

Respondent, in its advertising matter, circulated as aforesaid, also makes statements which represent or imply that all modern physicians use thyroid in the treatment of obesity; that, if a prospective purchaser of Marmola were to consult a specialist in obesity, he would probably prescribe the reducing ingredient contained in Marmola; that such medication in treating obesity generally is supported by the opinion of physicians and science the world over; and that the prospective purchaser's own physician would probably employ the same medication. Examples of such statements are the following: (All referring to use of thyroid medication.)

"The modern method of reduction now used by doctors the world over

" All modern doctors employ it

" this method has been employed by doctors the world over, in a very extensive way "

" Now that method has come into world-wide use. Physicians everywhere employ it in obesity "

" doctors the world over have been feeding that gland factor in obesity "

" Combat the cause, as all modern doctors do "

" Modern doctors, the world over, now bring reduction in a new way "

" What your doctor prescribes does reduce fat "

" a world-famous corrective for abnormal obesity. A corrective prescribed by physicians everywhere."

" Physicians know about this element and prescribe it for patients who easily take on fat from their food "

" The very element that physicians everywhere prescribe for fat-reducing is the principal element of Marmola. "

" But he (your doctor) will probably employ the Marmola factors, now recognized by science the world over "

As hereinbefore shown, such representations are misleading and inaccurate or only true in part and are not correct statements of the facts.

## PARAGRAPH EIGHT:

Respondent, in and by its advertising and printed matter, circulated to the purchasing public, makes many statements which represent or imply that Marmola or desiccated thyroid, the active ingredient of Marmola, is the remedy indicated in and best suited for the treatment of obesity or the reduction of excess fat in the great multitude of such cases or in the average case, or for all persons who are over-weight or who wish to reduce. Among such statements are the following:

"The Right Way to Reduce."

" \* \* \* The Marmola prescription, made for the multitudes, considers the average person simply seeking to reduce \* \* \* "

"Marmola is for the average case."

"The modern method of reduction, \* \* \* "

"Marmola Prescription Tablets

The Right Way to Reduce."

"If you want a slender, lovely figure, try Marmola."

" \* \* \* \* Why be fat when it's so easy to get rid of excess weight by means of a tried and true corrective, \* \* \* ."

" \* \* \* \* Go try Marmola if you overweigh, \* \* \* "

" \* \* \* \* why should anyone wishing to reduce fail to try this famous remedy \* \* \* "

" \* \* \* \* If you are overweight, you owe it to yourself to regain your youthful slenderness. \* \* \* All you do is to take four tablets (of Marmola) each day \* \* \* "

"Go try Marmola if you suffer excess fat, \* \* \* "

as well as many other representations of the same import as contained in respondent's advertisements when taken as a whole.

In truth and in fact, as heretofore stated, desiccated thyroid is suitable to be taken for reducing purposes only in a small proportion of cases and only then under the conditions and limitations previously set forth. Respondent fails to explain and set forth those limitations and conditions.

#### PARAGRAPH NINE:

Respondent, in and by its advertising matter, circulated to the purchasing public, makes many statements which represent or imply that Marmola or desiccated thyroid, the active ingredient of Marmola, feeds and stimulates the thyroid gland when taken internally and restores such gland to a normal condition and thus removes the cause of obesity or excess fat. Examples of such representations are the following:

" . . . . Doctors correct this condition (thyroid deficiency) by feeding this little gland the substance it lacks — and Marmola Prescription Tablets are based on this same method. . . . "

"Science Fights Fat Through an Important Gland."

" . . . . A common cause of excess fat is an under-active gland, which largely controls nutrition. Scientists . . . found that when they corrected that cause (by administering thyroid) fat dropped away. . . . "

"The chief purpose of Marmola is to feed and stimulate the thyroid gland, . . . ."



In truth and in fact, as heretofore stated, said representations are scientifically inaccurate and not correct statements of the facts involved, since neither Marmola nor desiccated thyroid, the ingredient thereof on which such statements are based, feeds the thyroid gland or stimulates or restores it to normal action and condition. Desiccated thyroid merely acts as a supplement to the secretion supplied by the thyroid gland.

#### PARAGRAPH TEN:

Respondent, in and by its advertising matter, circulated to the purchasing public, through the publication of certain tables of weights of persons, respectively, of the heights and ages severally indicated therein, and by various statements in its advertising matter in connection with such tables or referring thereto, represents and implies that such tables indicate for the prospective purchaser of Marmola, his or her correct or normal weight, which should be attained by taking Marmola; that any weight in excess thereof is due to abnormal excess fat and that said tables should be used as guides. Some of respondent's statements containing such representations and implications are the following:

"Stop Marmola when your weight comes down to normal. A table in this booklet tells you what a person of your height and age should weigh. If, later, you start to gain again, take more Marmola tablets until conditions are corrected."

"Correct Weight Based on Age and Height."

" . . . . . Simply take four tablets of Marmola daily until weight comes down to normal. . . . . "

"If you overweigh, go try Marmola. . . ."  
 " . . . . Use it (Marmola) as a treatment  
 —week by week—until you have approached  
 your normal weight. . . ."

"If you are overweight, you owe it to  
 yourself to regain your youthful slenderness.  
 . . . A book that you will find in every pack-  
 age gives full details."

"The right rule is to take Marmola until  
 you reach normality. A table in this pamph-  
 let tells your proper weight. . . ."

In truth and in fact, the tables of weights given by respondent in its printed literature are not tables of correct or normal weights, but of average weights. Such tables cannot be depended upon by the average lay person as a safe and accurate guide to his or her normal weight at a given height and age. Many persons, whose weights are correct and normal for them, vary in weight from such average figures. Many persons are overweight, when compared with the weights given in such tables, and at the same time do not have surplus or excess fat in their physical makeup. In such cases, Marmola should not be used and cannot be used without danger of injury to health. Such persons are normal as to weight so far as they themselves are concerned, although they are not the average. Such condition may be due to racial, family or individual characteristics or tendencies.

#### PARAGRAPH ELEVEN:

Respondent, in and by its advertising matter, circulated to the purchasing public, makes various statements which represent or imply that it makes a complete and true disclosure of all material and relevant facts in regard to

Marmola, its properties and effects, as well as those of the ingredients thereof. The prospective purchaser and user of said preparation is thus induced to believe that respondent has set forth and imparted to him or her all the information that one need know before deciding upon the use of the same and before taking the same as a medication for reducing purposes. Examples of such statements are the following:

"We feel a responsibility to those who buy Marmola and we wish them to know all the facts at our command. Here we present them, and we urge every user to read them. You should know what to expect, and why to expect it. You should know what you are taking and why. This little pamphlet will tell you in the best way we know. Please read it."

"Here we tell you what to expect."

"Herein we try to present a consensus of the best opinion as to why Marmola acts and how. You should read it carefully to learn how to accomplish the best results. Then hand it to some friend who is overweight—as a favor."

"In the 24 years of Marmola many wrong conceptions have developed. That is why we are publishing the facts and the formula.

• • • •

"• • • • This will answer all the questions asked about it (Marmola)—all the silly gossip about harmful ingredients and factors to beware of."

"No Secrecy."

"• • • • Ask your druggist for Marmola.

Read the book in the box to learn what to expect, and why. . . . .”

“If you overweigh, go try Marmola. All druggists supply it, and a book in each box tells you all about it. . . . .”

“ . . . . . The book in the Marmola package explains the details of this extraordinary treatment. . . . .”

“No secrets about Marmola. . . . .”

“ . . . . . A booklet in every package gives full details. . . . .”

In truth and in fact, respondent does not make a complete and true disclosure of all material and relevant facts in regard to Marmola, its properties and therapeutic effects, or those of its ingredients in any or all of its printed matter. Many pertinent facts are not told. Among such facts that respondent does not and has not disclosed to buyers of Marmola and prospective buyers thereof, are the following:

1. That desiccated thyroid is a powerful and dangerous drug or product when used internally for reducing purposes.

2. That desiccated thyroid attacks and oxidizes or burns not only fatty tissue but all bodily tissues.

3. That cases in which obesity or abnormal excess fat is caused by deficiency of the secretion of the thyroid gland are rare and exceptional, constituting only a small minority of the total number of such cases.

4. That medical science and physicians, generally speaking, justify, recommend and prescribe the use of thyroid as a treatment for obesity or abnormal excess fat only in

cases in which such condition is caused by a deficiency of the secretion of the thyroid gland.

5. That, in cases of obesity or abnormal excess fat not caused by a deficiency of the secretion of the thyroid gland, thyroid is not indicated as a proper treatment and is not the usual treatment used by physicians in such cases, and that its use in such cases is apt to be, and frequently is, harmful to the health of the user.

6. That many persons are so constituted that they may not use Marmola with safety to physical health. That many bodily conditions, defects and abnormalities make the use of Marmola harmful to the user. That, in respect to any person, it can be ascertained whether or not such person may safely take or use Marmola (desiccated thyroid) only by an examination by a competent physician, often to be supplemented by experimental use of such product under medical advice and observation. Also that, generally speaking, physicians prescribe and administer thyroid only after such examinations and precautionary safeguards and that such administration is usually followed by regular observation and examination of the patient.

7. That Marmola (desiccated thyroid) cannot be used generally for reducing purposes by self-medication without the possibility of harmful results.

8. That Marmola (desiccated thyroid) when used by a patient who has a deficiency



of the secretion of the thyroid gland, does not feed or stimulate such gland or materially increase its activity or tend to restore it to a normal condition, or, thereby, tend to remove the cause of the obesity or abnormal excess fat.

All of the things above enumerated, which respondent fails to make known to users and prospective users of Marmola, are true facts according to the consensus of medical opinion and according to the great weight of the expert testimony presented herein.

#### PARAGRAPH TWELVE:

Respondent has made representations, such as those alleged and set out herein, since April ~~14~~ 1929, in promotion of the sale of Marmola throughout the United States, and in urging the use thereof for reducing purposes by members of the public. Such representations have been made either by means of advertisements inserted in newspapers, magazines and periodicals of general circulation throughout the United States, by radio broadcasts, by booklets and printed matter, or by other means, or by one or more of such means. There are and have been, among the general consuming public, and especially among those who have seen and read or otherwise have become informed of respondent's representations, as herein set forth, many persons who are seeking or who are by respondent's representations caused to seek some safe and dependable means whereby they may safely, quickly, easily, certainly and permanently remove from their bodies superfluous flesh or excess fat. Many other persons having very little excess fat or superfluous flesh, or being only slightly over average weight or their own normal weights, or even below

these, also seek to reduce. These persons, or a great many of them, see and read and are influenced by respondent's representations as herein set out. Such members of the general purchasing public are uninformed and unskilled in medical science, and depend upon the statements and representations, or silence of, or lack of warning by, the makers and sellers thereof for information concerning taking or using remedies, preparations, methods or systems to be used in treating bodily conditions, ailments and abnormalities, and for their effects therein and as to their other bodily effects or lack thereof, and as to whether they may safely use the same. - The general public, including the purchasers and users of Marmola, have so depended upon the respondent herein, as to Marmola, and respondent's representations have encouraged and justified such dependence.

Such statements and representations made by respondent, as herein set out and referred to, and respondent's said failure to disclose the facts previously set forth and referred to herein as not having been disclosed, have the tendency and capacity to mislead and deceive the public, prospective purchasers of Marmola, and purchasers and users thereof, into the erroneous beliefs:

1. That all said statements and representations so made by respondent are true.
2. That the facts previously referred to herein as not having been disclosed by respondent, are not true or do not exist.
3. That all cases of obesity or excess fat are caused by thyroid deficiency.
4. That Marmola is indicated as a treatment in all such cases, is the proper and scientific treatment therein, and that it may be

used in all such cases without fear of harmful results and with safety to bodily health and physical well being.

5. That Marmola or desiccated thyroid, the effective reducing medium therein, is prescribed and used by all modern physicians in all cases of obesity or excess fat or for reducing purposes in all cases regardless of cause or origin of such condition or of the physical condition of the person concerned.

6. That Marmola is superior to all other remedies, systems, methods or means of effecting reduction that are offered for sale or sold to the purchasing public for use in such cases.

#### PARAGRAPH THIRTEEN:

The representations of respondent as aforesaid have had and do have the tendency and capacity to confuse, mislead and deceive members of the public in the particulars aforesaid and to induce them to purchase and use respondent's said preparation or medicine for reducing purposes because of such erroneous beliefs engendered as above set forth, in preference to and to the exclusion of the products of competitors, as herein specified and indicated, and to divert trade to respondent from such competitors engaged in the sale in interstate commerce of medicines, preparations, systems, methods, books of instruction, and other articles and means designed, intended and used for the purpose of reducing weight.

#### PARAGRAPH FOURTEEN:

There are among the said competitors of respondent those who do not make the same or similar misleading rep-

resentations as those made by respondent, as herein set out, in regard to the products sold by them, or who do not otherwise misrepresent them, and respondent's said acts and practices have tended to and have in fact diverted business to respondent from its said competitors to the substantial injury and prejudices of such competitors.

#### PARAGRAPH FIFTEEN

In arriving at the findings and conclusions herein stated, the Commission has carefully considered and weighed the testimony and evidence as presented in support of the complaint and as offered in behalf of respondent. Such testimony and evidence, so considered and weighed, included a considerable volume of expert testimony upon medical and scientific subjects included in the issues and subject matter here involved. Testifying, in support of the complaint, were five outstanding medical witnesses, who were called as experts and who qualified as such, and, in addition, a famous and distinguished pharmacologist of international reputation. Further, there were four other physicians, called to testify primarily as to certain facts involved, who also qualified as experts and who gave testimony of the same general character in support of the complaint as that given by the experts previously referred to.

For respondent, four physicians were called and gave expert medical testimony. Generally speaking, their testimony conflicts with that of the witnesses who testified in support of the complaint.

It is the opinion of the Commission, and it is so found, that the medical and scientific testimony offered in support of the complaint far out-weighs that offered in behalf of respondent, both in respect to the number of such witnesses and as to the character and convincingness of

the testimony given. Without intending to detract from respondent's expert witnesses, it is found that the medical and scientific opinions and conclusions of the expert witnesses who appeared in support of the allegations of the complaint are entitled to more weight and are more authoritative than the medical and scientific opinions and conclusions given by respondent's expert witnesses. The expert witnesses who testified in behalf of the complaint, taken as a group, are more outstanding professionally and their opinions entitled to more credit than those who appeared for respondent, taken as a group.

#### PARAGRAPH SIXTEEN:

The answer of respondent to the amended complaint herein pleads *res adjudicata* of the issues here involved. Evidence was introduced in support of this plea and in opposition thereto. The question is thus raised as a matter of fact and the Commission, therefore, makes findings in that regard, and passes upon it herein. The plea of *res adjudicata* is based on a previous proceeding by the Commission against said respondent and involving the same medicine as here involved. The Commission issued an order to cease and desist in said case on April 13, 1929, and the order was served on respondent on April 17, 1929. Said order was subsequently set aside by the United States Circuit Court of Appeals, Sixth Circuit. This action was later affirmed by the United States Supreme Court, but on the ground of lack of evidence as to competitors and competition. The Supreme Court's opinion sustained the findings of the Commission on the merits in certain other particulars.

The two cases are different. Respondent's representations upon which the two cases are based are entirely different, as are the general issues arising therefrom. The



first case was based upon two general classes of direct and specific representations, first, that Marmola is safe for use by the general public for reducing purposes, and, second that said medicine and the method of reducing thereby is scientific. No such direct and specific representations are involved in the present case. The various types of representations upon which the present complaint is based, are those previously set forth herein. They raise distinguishable issues from those involved in the first case. They constitute types of representations used after the service of the order to cease and desist issued in the first case against respondent.

### CONCLUSION

The aforesaid acts and practices of the respondent, Raladam Company, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission.

(Seal of Commission)

Signed: W. A. AYRES  
Chairman

Dated this 21st day of  
January, A. D., 1937.

ATTEST:

(Signed) OTIS B. JOHNSON,  
Secretary.

**ORDER TO CEASE AND DESIST OF FEDERAL  
TRADE COMMISSION***(Exhibit I Continued)***(Filed Jan. 21, 1937)**

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the answer of respondent, testimony and other evidence taken before John W. Norwood, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief in support of complaint, counsel for respondent having failed to file a brief, although given an opportunity so to do, and having failed to appear at the time and place set for oral argument after due notice of the same, and the Commission, having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an Act of Congress approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes";

IT IS ORDERED that the respondent, Raladam Company, its officers, representatives, agents and employees, in connection with the offering for sale, sale and distribution of Marmola, or of a preparation or medicine of the same or substantially the same formula, or of a preparation or medicine containing desiccated thyroid or other form of thyroid, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That thyroid deficiency is a common cause or the usual cause of obesity or excess fat or that, if a person is overweight, it is necessarily an indication of thyroid defi-

ciency and that thyroid should be taken for reducing purposes.

2. That all modern physicians use the reducing ingredient in Marmola or thyroid in the treatment of obesity, or that they use thyroid in all classes of such cases, and that such method of treatment in all such cases is supported by the opinion of physicians and science the world over, or, that if a prospective purchaser of Marmola, one seeking to reduce, would consult a specialist or his or her own physician, such medication would probably be used.

3. That Marmola or thyroid, the reducing ingredient therein, is the remedy indicated in and best suited for the treatment of obesity or the reduction of excess fat in the great multitude of such cases or in the average case, or for all persons who are overweight or who wish to reduce or for all persons whose weights are above the average for persons of their ages and heights.

4. That Marmola or thyroid, the reducing ingredient therein, feeds the thyroid gland, when taken internally, or stimulates or restores it to normal action or that it removes the cause of obesity or excess fat.

5. That a table of average weights for given ages and heights indicates a person's normal or correct weight at a given age and a given height or that any weight in excess of the average weight so given is due to excess fat and that such person should re-

duce and should effect the reduction by taking Marmola.

6. That respondent makes a full and complete disclosure of the properties and effects of Marmola or of the ingredients thereof, whether such representation be made directly or indirectly or by implication, unless and until it does in fact make such disclosure, including the following:

a. That desiccated thyroid is a powerful and dangerous drug or product when used internally for reducing purposes.

b. That desiccated thyroid attacks and oxidizes or burns not only fatty tissue but all bodily tissues.

c. That cases in which obesity or abnormal excess fat is caused by deficiency of the secretion of the thyroid gland are rare and exceptional, constituting only a small minority of the total number of such cases.

d. That medical science and physicians, generally speaking, justify, recommend and prescribe the use of thyroid as a treatment for obesity or abnormal excess fat only in cases in which such condition is caused by a deficiency of the secretion of the thyroid gland.

e. That, in cases of obesity or abnormal excess fat not caused by a deficiency of the secretion of the thyroid gland, thyroid is not indicated as a proper treatment or the usual treatment used by physicians, and that its use in such cases is apt to be and frequently is harmful to the health of the user.

f. That many persons are so constituted that they may not use Marmola with safety to physical health. That many bodily conditions, defects and abnormalities make the use of Marmola harmful to the user. That, in respect to any person, it can be ascertained whether or not such person may safely take or use Marmola or desiccated thyroid only by an examination by a competent physician, often to be supplemented by experimental use of such product under medical advice and observation. Also that, generally speaking, physicians prescribe and administer thyroid only after such examinations and precautionary safeguards and that such administration is usually followed by regular observation and examination of the patient.

g. That Marmola or desiccated thyroid cannot be used generally for reducing purposes by self-medication without the possibility of harmful results.

h. That Marmola or desiccated thyroid, when used by a patient who has a deficiency of the secretion of the thyroid gland, does not feed or stimulate such gland or materially increase its activity or tend to restore it to a normal condition, or thereby, tend to remove the cause of the obesity or abnormal excess fat.

IT IS FURTHER ORDERED that the respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting



forth in detail the manner and form in which it has complied with this order.—

By the Commission

(Seal of Commission)

(Signed) OTIS B. JOHNSON

Secretary

### AMENDED COMPLAINT

(Issued July 15, 1935)

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that the Raladam Company, a corporation, hereinafter referred to as respondent, has been or is using unfair methods of competition in commerce as "commerce" is defined in said Act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint stating its charges in that respect as follows:

Paragraph One: Respondent, Raladam Company, is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its office and principal place of business in the City of Detroit, in the State of Michigan.

Paragraph Two: Respondent is engaged in offering for sale and selling a certain medical preparation which it offers for sale and sells under the name and designation of "Marmola." Marmola is put up in tablet form and is to be sold to, and taken orally by, human beings who are



afflicted with obesity, or whose bodies carry abnormal excessive fat, or whose bodies are, or are believed by them to be, over-weight as compared with their correct, natural or normal weight, or who for any reason desire to reduce the weight of their bodies and to rid their bodies of some portion of the bodily tissues and weight which such bodies have or carry.

Respondent sells Marmola to wholesalers and jobbers of drugs located in the several States of the United States, who sell the same to retail druggists, who in turn sell the same to the consuming public which is made up of members of the laity. Respondent, when Marmola is so sold by it, causes the same to be transported from said City of Detroit, in the State of Michigan, into and through the several States of the United States and the District of Columbia to said purchasers thereof at their respective places of business located in said several States and in the District of Columbia.

Paragraph Three: There have been and are other persons, partnerships, associations and corporations who have been and are engaged in offering for sale and selling in said commerce between and among the several States of the United States and the District of Columbia the same, or like or otherwise competitive products, to-wit: preparations, systems, methods, or other means of treatment for obesity, abnormal excessive fat, body weight in excess of that which is correct, natural or normal, or of ridding human bodies of some portion of the fat, other bodily tissues and weight which such bodies have or carry. Said other persons, partnerships, associations and corporations have been and are engaged in so offering for sale and selling their said products in said commerce in competition and is in substantial competition with them all in so of with respondent's said Marmola. Respondent has been

fering for sale and selling Marmola in said commerce as above alleged.

Paragraph Four: Since April 17, 1929, respondent in aid of so offering for sale and selling Marmola in said commerce between and among the several States of the United States and the District of Columbia, has advertised the same in newspapers, magazines and periodicals of general circulation, by means of radio broadcasts and in pamphlets, printed testimonials and other printed matter, and by and through the use of photographs and other pictures, and on labels attached to and in circulars enclosed in the boxes in which said Marmola is packed when so offered for sale and sold and by other means. In, by and through each and all the advertising media above enumerated, respondent has expressly or by implication made, and makes, each and all of the statements and representations hereinafter set forth and alleged.

Paragraph Five: Marmola is a product made up of several ingredients, the formula thereof being printed by respondent in circulars, booklets and other advertising media above enumerated. The active principle incorporated in said product and the ingredient thereof that is powerful and is effective in ridding human bodies of portions of the fat, other bodily tissues and weight which they have, or carry, is desiccated thyroid. The reducing effect produced by the use of Marmola as a treatment to be taken orally is substantially the effect of, and that produced by, desiccated thyroid, which is hereinafter referred to as thyroid.

Desiccated thyroid is made from the thyroid glands of animals such as the sheep, cow, pig and goat. It is a powerful and dangerous drug. When given to a patient, it increases the burning within the body of the fat, other tis-

sues and the food. By speeding up the oxidizing and burning processes of the body, desiccated thyroid, when taken, tends to cause a loss of fat. The thyroid gland in the human body controls the combustion of food in the body. It turns portions of food into fuel and energy. Desiccated thyroid taken into the body performs the like function and increases such combustion, turning food into fuel and energy. The use of thyroid taken as an internal remedy always increases within the body the burning up or consumption of food and bodily tissues, excessive fat burning more easily than other tissues of the body. Other bodily tissues are burned and consumed by the use of such thyroid, especially when excessive fat has been consumed, or in a body in which there is no abnormal, excessive fat.

Paragraph Six: Some persons have deficient thyroid glands, to-wit: thyroid glands which are sub-normally active and which perform their normal functions imperfectly and partially only, turning less than the normal proportion of food into fuel and energy, and permitting more than the normal proportion of food to be deposited in, or added to, the body in the form of fatty or other tissues.

This is the cause of excessive fatty or other tissues in the body of a person whose thyroid gland is deficient as above indicated. Thyroid taken by such a person does not feed or stimulate his thyroid gland or increase its activity; nor does it tend to restore his thyroid gland to normality, and thereby to remove the cause of abnormal excessive fatty or other tissues, or of overweight, in his body. Thyroid taken by such person performs the function ordinarily performed by a normal thyroid gland, duplicates or supplements any such function as is being performed by such deficient thyroid gland, or performs a substitute function, whereby the normal proportion of his food is turned to

fuel and energy and the fatty or other tissues, and the weight, of his body tend to be reduced to normality.

Paragraph Seven: There are persons whose bodies in their natural and normal state are so constituted that such persons may not take or use thyroid without harmful results to their bodies. As to any person the only way in which it may be ascertained whether or not such person may take or use thyroid, without harmful results to his body, is by an examination made by a competent physician, or by experimental use of thyroid by such person under competent medical advice and supervision, or by both such methods combined. Only by the same means may it be ascertained as to any person in how large quantities thyroid may be taken or used by such person without harmful results.

Paragraph Eight: There are certain conditions of the human body which made it harmful for such persons to take or use thyroid. Among these is pregnancy. Other such conditions are defects or abnormalities of the heart or kidneys. Any defect or abnormality of body is liable to make the taking or use of thyroid harmful to the user.

Only by an examination made by a competent physician may it be ascertained of any person whether or not the body of such person has any such condition, defect or abnormality by which it is made harmful for such person to take or use thyroid.

Paragraph Nine: Obesity, abnormal, excess fat, may be the result of more than one cause. One of the causes is a deficient or abnormally inactive thyroid gland. Deficiency of thyroid glands causes obesity or abnormal excess fat in only the rare and exceptional cases, to-wit: in a small minority of the total number of such cases. In a large majority of the total number of such cases the persons affected do not have deficient thyroid glands, and such

obesity or abnormal excess fat is the result of a cause or of causes other than deficient thyroid glands.

In the case of any person it can be ascertained whether or not his thyroid gland is deficient, and whether or not obesity or abnormal excess fat is the result of thyroid deficiency, only by an examination made by a competent physician.

Paragraph Ten: In, by and through its advertising media above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that modern medical science has discovered that thyroid deficiency is a common cause of obesity or abnormal, excessive fat, that if a prospective purchaser or other person is abnormal in weight that person's thyroid gland is abnormal, that people who are over-fat generally have an under-active thyroid gland, and that the cause of obesity or abnormal excess fat usually lies in an under-active thyroid gland.

In truth and in fact, as hereinabove alleged, deficiency of the thyroid gland exists only in rare and exceptional cases and is the cause of obesity or abnormal excessive fat only a small minority of the total number of cases.

Paragraph Eleven: In, by and through its advertising media above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that all modern physicians use thyroid in the treatment of obesity, that, if a prospective purchaser of Marmola were to consult a specialist in obesity, he would probably prescribe about the factors the prospective purchaser is getting in Marmola, that such is the opinion of physicians the world over, and that the prospective purchaser's own physician would probably employ the Marmola factors, now recognized by science the world over.

In truth, and in fact, competent physicians prescribe and use thyroid only in the rare and exceptional cases in which



obesity, or abnormal excess fat, is caused by deficiency of the thyroid gland, and do not prescribe it in any case unless and until they have ascertained by examination of the patient, that his obesity or abnormal excess fat has been caused by deficiency of the thyroid gland, and also that no bodily conditions, defects or abnormalities exist in his case which are likely to make the taking or using of thyroid harmful to the patient. Competent physicians after such examination and precautions, prescribe the use of thyroid only under medical advice and observation. In fact and in truth, respondent's preparation, to-wit: Marmola, is one which cannot be used generally with safety to physical health, except under medical direction and advice.

Paragraph Twelve: In, by and through its advertising media above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that the use of Marmola as indicated in certain directions printed by respondent upon said labels, pamphlets and advertising media is best suited to the needs of the multitude, of the average person, of the normal person, in the average case and in the normal case.

In truth and in fact, Marmola is suited to the needs of only such persons as have obesity or abnormal excess fat caused by deficiency of the thyroid gland. Such persons are rare and exceptional, as above alleged. They are not the multitude or average persons or normal person nor are theirs average cases, or normal cases within the intent and meaning of said representation.

Paragraph Thirteen: In, by and through its advertising media as above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that the object of the use of Marmola is to feed and stimu-

late the patient's thyroid gland, to restore such gland to normality and thus and thereby to remove the cause of the patient's obesity or abnormal excess fat.

In truth and in fact, as hereinabove alleged, the use of thyroid does not feed or stimulate the patient's thyroid gland, nor does it tend to restore such gland to normality, and thus remove the cause of the patient's obesity or abnormal excess fat.

Paragraph Fourteen: In, by and through its advertising media as above alleged, respondent states and represents to the public and to prospective purchasers of Marmola that a certain table of weights of persons respectively of the heights and ages severally indicated in said table indicates for each such prospective purchaser his correct or normal weight, that any weight in excess thereof is abnormal excess fat, and that such prospective purchaser ought to take and use Marmola until his weight has been reduced to said so-called correct or normal weight.

In truth and in fact, said table is not a table of correct or normal weights, but is a table of average weights. By reason of racial or family or individual characteristics or tendencies, the bodies of many persons who have no abnormal or excessive fatty or other tissues weigh substantially more than said so-called correct or normal weight, no part of which may safely be removed from their bodies by the use of Marmola.

Paragraph Fifteen: There are many persons in and throughout the several States of the United States and the District of Columbia who are seeking some safe and dependable means whereby they may quickly, easily, certainly and permanently remove from their bodies obesity, or abnormal excess fat, or over-weight of flesh, or some portion of the bodily tissues or weight which such bodies have or carry.

Such persons are unskilled in medical science and depend for their information as to what treatment or remedy or preparation or method or system they may safely purchase, take and use, largely upon statements and representations made by the makers and sellers thereof.

Paragraph Sixteen: In, by and through its advertising media as above alleged, respondent prints for the information of the public and prospective purchasers, a statement of its purpose in the printing and distributing its said advertisements, in these words: "We feel a responsibility to those who buy Marmola and wish them to know all of the facts at our command," then and thereby giving to the public and to prospective purchasers of Marmola the assurance that in its said advertising media it has published to the public and to all prospective purchasers of Marmola a complete and true disclosure of all material facts relative to Marmola, its properties and therapeutic effects.

In its said advertising media respondent does not disclose any or all of the following facts hereinabove alleged:

1. That desiccated thyroid is a powerful and dangerous drug.
2. That the one effect of such thyroid is to increase the burning within the human body of food and tissues.
3. That by speeding up the oxidizing and burning processes of the body, desiccated thyroid when taken, tends to cause a loss of fat.
4. That cases in which obesity or abnormal excess fat is caused by deficiency of the thyroid gland are rare and exceptional, constituting only a small minority of the total number of such cases.
5. That medical science and physicians justify the use of thyroid as a treatment for obesity or abnormal excess fat only in cases in which obesity or abnormal excess fat is

caused by deficiency of the thyroid gland; and that competent physicians prescribe its use only in such cases.

6. That in cases of obesity or abnormal excess fat not caused by deficiency of the thyroid gland the use of thyroid is not by medical science indicated as proper treatment and its use therein is harmful to the health of the user.

7. That many persons are so constituted that they may not use Marmola with safety to physical health. That many bodily conditions, defects and abnormalities make the use of Marmola harmful to the health of the user. That in respect of any person it can be ascertained whether or not such person may safely take or use Marmola only by an examination by a competent physician, sometimes to be supplemented by experimental use thereof under medical advice and observation; and that physicians prescribe the use of thyroid only after such examination and other precautionary safeguards.

8/ That respondent's preparation, to-wit: Marmola, is one which cannot be used generally with safety to physical health, except under medical direction and advice.

9. That the use of thyroid by a patient who has a deficient thyroid gland does not feed or stimulate such deficient gland, does not increase its activity, does not tend to restore such deficient gland to normality, and does not thereby tend to remove the cause of his obesity or abnormal excess fat.

Paragraph Seventeen: Said statements and representations so made by respondent and respondent's said failure to disclose any or all of the facts set forth and referred to in Paragraph Sixteen of this complaint, have the tendency and capacity to mislead and deceive the public and prospective purchasers into the erroneous belief:

1. That all said statements and representations so made by respondent are true.

2. That the facts which respondent is alleged in Para-

graph Sixteen of this complaint to have failed to disclose, do not exist.

3. That all cases of obesity or abnormal excess fat are caused by deficiency of thyroid glands.

4. That Marmola is a scientific and safe remedy for all such cases.

5. That Marmola is prescribed and used by all modern physicians in all such cases.

6. That Marmola is superior to all other remedies being offered for sale or sold to the public for use in all such cases.

Said statements and representations so made by respondent have the tendency and capacity to induce the public and prospective purchasers, in and because of such erroneous belief, to purchase Marmola in preference to and to the exclusion of, any and all identical or like or otherwise competitive products, to-wit: preparations, systems, methods, or other means of treatment so being offered for sale in said commerce by said competitors of respondent as hereinabove alleged: thereby diverting trade to respondent from its said competitors, to the injury of such competitors, and to the deception and injury of the public.

Paragraph Eighteen: The above alleged acts and practices are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

THEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission, on this 15th day of July, A. D., 1935, now here issues this its amended complaint against said respondent.



**ANSWER OF RALADAM COMPANY  
TO AMENDED COMPLAINT**

(Filed July 31, 1935)

The answer of the Raladam Company, the above named respondent, to the Amended Complaint of the Federal Trade Commission, the above named complainant, respectfully shows:

1. Respondent says that the said Amended Complaint is defective and insufficient in point of law; that said Amended Complaint fails to state facts sufficient in law to show that said complainant possessed lawful power and authority to issue and serve the said Amended Complaint and that in truth and fact complainant does not possess lawful power and authority to issue and serve the said Amended Complaint and does not possess lawful power and authority here to issue any order on said Amended Complaint except an order of dismissal. That said complainant has been and now is biased and prejudiced against respondent and has prejudged its said Amended Complaint against respondent and will not and cannot afford respondent a fair and impartial hearing as required by and in conformity with Article VI of the Articles in addition to and amendment of the Constitution of the United States, and that any order to be made or attempted to be made by complainant pursuant to the said Amended Complaint will be void because repugnant to the due requirements of said Article VI as aforesaid. That said Amended Complaint fails to state facts sufficient in law to show that respondent is using or ever has used unfair methods of competition in commerce within the meaning of the Statute mentioned in the said Amended Complaint and that said Amended Complaint is vague, uncertain, indefinite and argumentative, and states

complainant's alleged opinion with regard to matters of medical opinion. It does not tender any definite or certain or material or any issue or issues of fact and does not fairly or sufficiently apprise respondent of what issue or issues of fact will be tried at the hearing of the said Amended Complaint and that insofar as the said Amended Complaint may be said to tender any definite or certain issue or issues of fact or law and insofar as any matters or things are in issue or might be in issue under the uncertain, indefinite and argumentative allegations and averments of the said Amended Complaint, respondent alleges that all such issues, controversies, averments and allegations were heretofore in issue between complainant and respondent in certain proceedings initiated and commenced by complainant before it itself and entitled "In the Matter, of Raladam Company, Docket No. 1496" and all such issues, averments, allegations and controversies were also further in issue between the said complainant and this respondent in a proceeding commenced by this respondent in the United States Circuit Court of Appeals for the Sixth Circuit wherein respondent filed its petition to review the order pretended to be made by complainant, Federal Trade Commission, in said proceedings. The said proceedings so commenced by respondent in the United States Circuit Court of Appeals for the Sixth Circuit being entitled "Raladam Company, petitioner, vs. Federal Trade Commission, respondent, No. 5429"; that thereafter issue was duly joined in said proceedings and it duly proceeded to a final decree in said Circuit Court of Appeals wherein it was found, determined and decided that the pretended order of the complainant herein, Federal Trade Commission, was wholly void and of no force and effect and wherein all of the issues tendered or purported to be tendered or attempted to be tendered by the complainant in these proceedings

were found, determined, decided and adjudicated and it was found, determined and decided that the complainant herein was without lawful power or authority to make any determination or order such as complainant seeks to make in the above entitled cause, and respondent further avers that thereafter the decree of the said Sixth Circuit Court of Appeals was duly affirmed by the Supreme Court of the United States, and respondent further avers that all of the issues, matters and things now in issue or which might be in issue under the averments of the Amended Complaint in the above entitled cause are res adjudicata and the finding, determination and decree of the United States Circuit Court of Appeals for the Sixth Circuit bars complainant from now raising or attempting to raise any of the issues which are raised or attempted to be raised by the said complainant and that the said Commission is without jurisdiction, power or authority to proceed further herein or to make any order except an order of dismissal of the said Amended Complaint.

2. Respondent respectfully saves and reserves unto itself to be alleged as and when this proceeding shall come before any court, all and all manner of exceptions and objections that can or might be taken to the power and authority of the complainant in the premises and that can or might be taken to the said Amended Complaint on account of the manifold defects and insufficiencies thereof and on account of the matters and things set forth in the next preceding paragraph of this Answer.

3. Answering the introductory paragraph of the said Amended Complaint, respondent denies that complainant has any reason to believe that respondent has been or is using unfair methods in competition in commerce as defined in the said Act therein referred to or otherwise howsoever and denies that complainant has acted, or that these proceedings by complainant is or will be in the public in-

terest and respondent denies that it has been or now is using unfair method or methods in commerce in violation of the Statute therein referred to.

4. Answering paragraph numbered one, respondent admits the allegations thereof.

5. Answering paragraph numbered two, respondent admits that it sells a medical preparation under the name and designation of Marmola Prescription Tablets, which said name is duly registered in the United States Patent Office, and admits that the product is put up in tablet form and is designed to be sold to and taken orally by human beings as a treatment for the reduction of abnormal and excess fat. Respondent admits that it sells said product to wholesalers and jobbers of drugs located in the various states in the United States and in foreign countries; that the product is thereafter sold by such wholesalers to the retail druggists, and thereafter to the public. It admits that it causes its product to be shipped from the City of Detroit, State of Michigan, into and through other states of the United States and foreign countries, to the persons and corporations purchasing the same from respondent. All other allegations in said paragraph contained are denied.

6. Answering paragraph numbered three, respondent denies the allegations therein contained, and denies that it has any substantial competition with corporations, co-partnerships and individuals as in said paragraph alleged, and denies that there now exists or has existed any competitors of respondent or any competitors of respondent of the kind or character entitled to be protected by the Act of Congress referred to in said Amended Complaint or by order of complainant acting thereunder, and respondent denies that complainant is seeking to protect any such supposed competitors; and further answering says that if



there are any such persons or corporations who might be deemed to be in competition with respondent, that such supposed competitors are deemed and considered by the said complainant to have been and to be guilty of the same alleged unfair practices as purported to be charged against this respondent as well as other alleged unlawful and unfair practices, and respondent denies that this proceeding is brought in the interest of or for the protection of, or to otherwise benefit in any way such supposed competitors, and this respondent further avers that it has been and now is the design and purpose of complainant to attempt to prohibit all trade in commerce in medicinal preparations designed or sold as a treatment for obesity except and unless such products are sold upon the prescription of, or under the advice, control and supervision of, a member of the medical profession; and respondent further avers that these proceedings are brought solely and only for the purpose of benefiting and protecting the members of said medical profession and not for the purpose of protecting any alleged or supposed competitor of respondent, but solely and only as a step in the illegal and unlawful purpose of respondent to eliminate and stop all trade in commerce in medicinal preparations for the purpose of treating abnormal and excess fat. Respondent further avers that all questions and issues sought to be raised or which could be raised under the averments and allegations of said paragraph three were heretofore in issue and litigated in the proceedings hereinbefore referred to and have been found, determined, decided and adjudicated against the claims and contentions of complainant, and that such alleged issues are res adjudicata and not subject to be again re-examined or redetermined in this or in other proceedings between complainant and respondent.

7. Answering paragraph numbered four, respondent



admits that since April 17th, 1929, and for many years prior thereto it has advertised its products in substantially the advertising media in said paragraph mentioned. The other allegations in said paragraph contained are denied.

8. Answering paragraph numbered five, respondent admits that its product contains several ingredients, and that the formula thereof is contained in the booklet or circular enclosed in the package containing the products. It admits that one of the ingredients thereof is desiccated thyroid, each tablet containing one-half grain of such substance, and that such desiccated thyroid is useful and efficacious as a part of respondent's treatment for the reduction of abnormal and excess fat. Respondent denies that the therapeutic effect of respondent's products is solely and only substantially the effect produced by desiccated thyroid alone, but on the contrary avers that such of the other ingredients of its product as are not included to subserve manufacturing convenience for taste, appearance, and for like or similar purposes, are useful and efficacious in the treatment for the reduction of abnormal and excess fat, and have therapeutic value in such treatment. Further answering said paragraph respondent admits that desiccated thyroid is made from the thyroid gland of food animals, such as the sheep, cow, pig, and goat. It denies that it is a dangerous and powerful drug; and denies that it is properly denoted as a drug, but on the contrary avers that it is a biological product and a normal constituent of the human body; it admits that it is the opinion of many doctors and members of the medical profession that when thyroid is taken orally by human beings or other living animals that it increases the consumption within the body of the food that is taken, thereby tending to reduce or eliminate the formation of excess and abnormal fatty tissues, and that it likewise tends to reduce, and is useful and effi-

cacious in the treatment for the reduction of, abnormal and excess fat theretofore deposited in such body; it admits that it is the opinion of many doctors and members of the medical profession that one means among others by which thyroid tends to accomplish the prevention and reduction of abnormal and excess fat in the human body is, by increasing the oxidizing processes normally present within such body, thereby turning food into fuel and energy, but respondent denies that such means is the only means by which such result is accomplished by the use of thyroid; it denies that the thyroid gland in the human body solely and only controls the so-called combustion for the reduction of food into fuel and energy; but it admits that the thyroid gland has an effect thereon; it admits that thyroid, when taken as an internal treatment, always aids and assists the body in consuming and eliminating the food intake and in preventing the formation of excess and abnormal fat, and in reducing such abnormal and excessive fatty deposits.

9. Answering paragraph numbered six, respondent admits that many persons have deficient thyroid glands which glands fail to sufficiently stimulate and assist the body in the consumption of food and the prevention of excessive fatty deposits, and that the taking of desiccated thyroid by any such person tends to assist the body in consuming and eliminating the food intake, converting food into fuel, and energy, and preventing and reducing excessive fatty deposits. Respondent denies that any person knows the exact means and method of such accomplishment, and avers that the methods and processes thereof are solely matters of opinion, and it denies that desiccated thyroid does not feed or stimulate the thyroid gland, and denies that it does not tend to restore such thyroid gland to so-called normalcy, but avers that in its opinion desiccated thyroid not only supplements the thyroid gland of the human body but

its use also tends to feed, stimulate and restore such gland to its proper and normal functioning capacity.

10. Answering paragraph numbered seven, respondent denies that there are any persons whose bodies in their natural and normal state are so constituted that such persons may not take or use thyroid in the manner and in the dosages and to the extent and under the directions and advice given by respondent in connection with the sale of its product; and respondent further denies that there are any persons with abnormal and excessive fatty deposits from their bodies who may not take without harmful results respondent's treatment therefor in the manner recommended and advised by respondent in the literature accompanying its product; and respondent denies that any such persons may not take respondent's treatment in the manner aforesaid without recourse to a medical practitioner, and avers that in and by the advertising media referred to in said Amended Complaint nothing more is represented, either directly or by implication, than that respondent's said product is made for the multitudes, and that if taken in the doses specified and under the directions, instructions and advice accompanying the product, said Marmola Tablets are safe and effective for the "average person" suffering from abnormal excess fat and in the "average case" of such abnormal obesity, and respondent avers that such representations so made by it as aforesaid are true; and respondent denies all other allegations in said paragraph contained not hereinbefore answered.

11. Answering paragraph numbered eight, respondent denies that there are any conditions in the human body which make it harmful for such persons to take or use respondent's treatment to the extent, in the manner, and under the directions and advice issued by respondent; and respondent denies that it is harmful for persons with ab-

normal and excessive fatty deposits to take respondent's treatment during pregnancy, or when any of the other conditions as set forth in said paragraph are present; and respondent further denies that it advertises its product to or for use by any such supposed person; respondent avers that it advertises its product to, and the same may be safely used by, the class of persons for whom said product is intended and in the class of cases for which said product is intended, namely, average persons and average cases, who are suffering from abnormal excess fat, without other information, guidance or advice than that supplied by respondent; and respondent denies all other allegations in said paragraph set forth not hereinbefore answered.

12. Answering paragraph numbered nine, respondent denies that obesity, abnormal and excess fat, may be the result of more than one cause, but on the contrary avers that abnormal and excess fat in the human body is invariably caused by the failure of the body to consume the food intake and prevent the formation of abnormal and excessive fatty tissues; and respondent avers that the taking of respondent's treatment, under the directions and advice issued by respondent, by any person suffering from such excessive fatty deposits, will invariably assist such person's body in preventing and reducing such abnormal and excessive fatty deposits; and respondent denies that it is necessary for any such user to consult a medical adviser.

13. Answering paragraph numbered ten, respondent admits that in and through its advertising it states and represents that abnormal and excess fat may be properly treated by the use of respondent's preparation, and that the use thereof under the direction and advice as given by respondent will tend to reduce such abnormal fatty deposits, and respondent avers that such statements and representations made by it are true. All other allegations



in said paragraph contained are denied. Further answering said paragraph, respondent avers that the exact processes of the human body in accomplishing the said results by the introduction of respondent's product are solely and purely matters of opinion, and that any statement heretofore made by respondent with respect to the effects of its said product, methods of accomplishing the same, and the results thereof, are likewise matters of opinion, and respondent believes the same to be true, and said opinions are likewise held by physicians consulted by respondent, and respondent avers that complainant has no jurisdiction thereof.

14. Answering paragraph numbered eleven, respondent denies that it has ever represented that all physicians use thyroid in the treatment of abnormal and excess fat, or that all physicians use any other substance. It admits that it has stated and represented that many modern physicians use thyroid in the treatment of obesity and abnormal and excess fat, and that if a prospective purchaser afflicted with obesity and abnormal and excess fat would seek such physician's advice as to an internal treatment, that such supposed and hypothetical physician, in such supposed and hypothetical case, would in all probability prescribe one of the active ingredients of Marmola, meaning thereby, thyroid, and respondent avers that such statement by respondent is patently and obviously a statement of respondent's opinion in that regard, and respondent believes the same to be true, and avers that there are many modern physicians who have in the past prescribed thyroid and are now prescribing thyroid for the treatment of obesity and abnormal and excess fat, and respondent avers that in its opinion desiccated thyroid is the most extensively used treatment by physicians for the reduction of abnormal and excessive fatty deposits in the human body. All



other averments contained in said paragraph are denied.

15. Answering paragraph numbered twelve, respondent admits that it states and represents that in its opinion the use of Marmola by persons suffering from abnormal and excess fat according to the directions, instructions and advice issued by respondent, is best suited to the needs of the multitude or of the average person in the average normal case of such affliction, and respondent avers that such statements and representations are true, and respondent further avers that the complainant is without jurisdiction thereof. All other allegations in said paragraph contained are denied.

16. Answering paragraph numbered thirteen, respondent denies the allegations therein contained. Further answering said paragraph respondent avers that its representation and statement with respect to the matters in said paragraph alleged is and has been as follows:

"The chief purpose of Marmola is to correct the deficiency which causes the accumulation of excess and abnormal fat. The first dose of Marmola starts a new supply of this factor, but slowly, as it takes a little time to become 'apparent.'"

and respondent avers that such statement is true.

17. Answering paragraph numbered fourteen, respondent denies the allegations therein contained, except that it admits that it publishes in the booklet a table of average weights as compiled by the Association of Life Insurance Medical Directors and Actuarial Society of America, and respondent denies that it represents such table of weights to be anything other than that which in truth and in fact the same is.

18. Answering paragraph numbered fifteen, respondent admits that there are many persons in the United States and elsewhere who are afflicted with obesity and

abnormal excess fat and are seeking a treatment therefor, and that respondent's treatment is advertised to be sold to such persons, and respondent avers that it may be safely taken by such persons under the directions, instructions and advice as issued by respondent, and that respondent's preparation is useful and efficacious in such treatment.

19. Answering paragraph numbered sixteen, this respondent admits that at one time, several years ago, it printed in the booklet enclosed in the Marmola package a statement, part of which is quoted in said paragraph, the full and complete statement having been as follows:

"We feel a responsibility to those who buy Marmola and we wish them to know all the facts at our command. Here we present them, and we urge every user to read them. You should know what to expect, and why to expect it. You should know what you are taking, and why. This little pamphlet will tell you in the best way we know. Please read it."

but respondent avers that it has not printed said statement for several years, and further avers that it was never used except in the booklet contained in the Marmola package, and respondent denies that in and by said statement the public and prospective purchasers of Marmola were given any such assurance as in said paragraph set forth and claimed by complainant, and denies that it is under any duty or obligation as in said paragraph asserted, and respondent further avers that said statement formerly made by it and quoted as aforesaid was and is true. Further answering said paragraph respondent denies that the matters and things set forth in the sub-paragraphs 1 to 9 inclusive as being alleged facts, are, in truth, facts at all, but avers that they are largely matters of supposed medical opinion

and untrue, and respondent avers that in so far as any of the matters and things in said paragraph alleged are true facts, respondent sufficiently and adequately discloses their existence in and through its booklet and other advertising media.

Further answering, respondent denies that thyroid is a powerful and dangerous drug, and denies that it is a drug at all, but avers that it is a biological product, and denies that the one effect of thyroid is to increase the burning within the human body of food and tissues; denies that when taken by a person afflicted with abnormal and excess fat, according to the instructions and directions issued by respondent that it does anything except to assist said person's body in preventing and reducing such abnormal and excess fat; respondent admits that when taken it tends to cause a loss of fat, but denies that such effect is produced solely by increasing the oxidizing and burning processes of the body, and avers that the increase of oxidation is only one means, among several, by which said result is accomplished; denies that abnormal and excess fat is the result of a deficiency in the thyroid gland only in rare and exceptional cases, but avers that such supposed fact or opinion is wholly immaterial for the reason that thyroid is useful and efficacious in the treatment for the reduction of abnormal and excess fat, wholly irrespective of whether or not the subject of such treatment has a deficient or normal thyroid gland action; denies that the use of thyroid for the treatment of abnormal and excess fat is not proper and efficacious except in cases where such abnormal and excess fat is caused by a deficiency in the thyroid gland, but avers that it is useful and efficacious in all cases of abnormal and excess fat; denies that there are any persons suffering from abnormal excess fat so constituted that they may not use Marmola according to the di-

rections, instructions and advice issued by respondent with safety to their physical health; denies that persons suffering from abnormal and excess fat may not take respondent's preparation with safety except under the instructions and advice of a physician or medical practitioner, and denies all other allegations in said paragraph contained not hereinbefore answered.

20. Answering paragraph numbered seventeen, respondent denies that any advertisement published by it contains or omits anything, so that when said advertisement is fairly construed it is calculated to mislead or deceive the purchasing public or any other person, as averred in said paragraph; and it denies that any statement made or omitted by it makes any of its advertising have the tendency or capacity so to mislead or deceive; and denies that any such advertising has the tendency or capacity to divert trade to respondent, or to otherwise injure any competitor, and denies that it has any such competitor, and denies that complainant has any lawful power or authority to attempt to measure respondent's statements and representations by the standard selected by complainant and averred in said paragraph, namely, the standard of whether respondent's statements and representations have "the tendency and capacity" as in said paragraph alleged, and respondent says that such standard so attempted to be adopted by complainant is an arbitrary and capricious one resting wholly within the keeping of the person who proposes to apply it and subject to variations at such person's whim and caprice, and respondent avers that the only standard by which its statements and representations may lawfully be measured by complainant or by anybody else is whether if such statements and representations should be read with ordinary care and attention by a person of ordinary intelligence reasonably familiar with the



language in which such statements are made, such reader would or would not, be reasonably likely to be mislead or deceived, and respondent denies that it has made any statement or representation which when judged either by the standard attempted to be adopted by the complainant or any lawful and proper standard which may or might be so adopted is untrue or false or misleading; and respondent denies each and every other allegation in said paragraph contained.

21. Answering paragraph numbered eighteen, respondent denies each and every allegation therein contained.

22. Further answering respondent says that the several matters in respect of which complainant in its said Amended Complaint has charged respondent with having made false representations, as in said Amended Complaint set forth, are each and all matters of opinion and not matters of fact and that the expression by respondent of its opinion in respect of said matters, even though such expression were unfounded and unsound, and contrary to the opinion and judgment of all other persons (all of which respondent denies) cannot and does not constitute an unfair method of competition within the intent and meaning of the statute mentioned in said Amended Complaint and that complainant has no lawful power or authority to consider or to express any view upon whether any expression by respondent in respect of any matter of opinion is sound or unsound, false or true, and that it has heretofore been found, determined, decided and adjudicated that the said complainant is without such lawful power and authority in the proceedings in the United States Circuit Court of Appeals for the Sixth Circuit hereinbefore referred to.

23. Further answering said Amended Complaint, respondent adopts, reaffirms, reavers and realleges all of the denials, averments and allegations contained in its an-



swer heretofore filed to the complaint of the Commission entitled "In the Matter of Raladam Company, Docket No. 1496" with the same force and effect as if the said answer was herein set forth and repeated. And further answering respondent denies each and every allegation not hereinbefore specifically answered.

WHEREFORE respondent prays that the said Amended Complaint may be dismissed.

**RALADAM COMPANY,**

By (Signed) E. D. Hayes

Its President

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**ORDER APPOINTING EXAMINER AND FIXING  
TIME AND PLACE FOR TAKING TESTIMONY**

(Filed December 20, 1935)

This matter being at issue and ready for the taking of testimony,

IT IS ORDERED that John W. Norwood, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

IT IS FURTHER ORDERED that the taking of testimony in this proceeding begin on Monday, January 6, 1936, at ten o'clock in the forenoon of that day at room 1123, New Post Office Building, Chicago, Illinois.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed imme-

diately to take testimony and evidence on behalf of the respondent. The examiner will then close the case and make his report.

By the Commission.

OTIS B. JOHNSON,

Secretary.

(Federal Trade Commission Seal)

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**STIPULATION REGARDING OMISSIONS  
FROM PRINTED RECORD**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above entitled cause, through their respective attorneys, that the original complaint and the answer thereto shall be omitted from the printed record.

IT IS FURTHER STIPULATED AND AGREED that all exhibits introduced in evidence by either party shall be treated as physical exhibits and likewise omitted from the printed record.

Butzel, Eaman, Long, Gust & Bills,  
Attorneys for Petitioner,  
Raladam Company.

W. T. Kelley,  
Attorney for Respondent,  
Federal Trade Commission.

Dated: March 14, 1940.

# CERTIFICATE OF FEDERAL TRADE COMMISSION AS TO TRANSCRIPT

(Made January 15, 1940)

I, A. N. Ross, acting secretary of the Federal Trade Commission, do hereby certify that transmitted herewith is a full, true and complete transcript of proceedings had before the Federal Trade Commission in the above entitled matter, consisting of:

Part 1—Pleadings and Testimony.

Part 2—Exhibits.

and separate original exhibits marked:

2-1	2-2	2-3	2-4	2-5	2-6	2-7
2406-1	2406-1	2406-1	2406-1	2406-1	2406-1	2406-1
2-8	2-9	2-10	2-11	2-12	2-13	2-14
2406-1	2406-1	2406-1	2406-1	2406-1	2406-1	2406-1
2-15	2-16	2-17	2-18	2-19		
2406-1	2406-1	2406-1	2406-1	2406-1		

That this transcript is certified to the United States Circuit Court of Appeals for the Sixth Circuit, pursuant to the filing in said Court of a petition for review of an Order to Cease and Desist, dated January 21, 1937, entered by the Federal Trade Commission in that proceeding.

In witness whereof, I hereunto subscribe my name and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 15th day of January, A. D., 1940.

A. N. ROSS,  
Acting Secretary.

## PROCEEDINGS

(Commenced Jan. 6, 1936)

Before:

John W. Norwood, Examiner.

Appearances:

E. J. Hornibrook, and

Harry D. Michael, of Washington, D. C., for the Federal Trade Commission.

Rockwell T. Gust, 2288 National Bank Building, Detroit, Michigan, appearing for the Respondent.

Examiner Norwood: Are you ready to proceed, gentlemen?

Mr. Michael: Yes.

Examiner Norwood: The hearing will come to order. Pursuant to an order of the Federal Trade Commission dated the 20th day of December, 1935, heretofore issued in this case, a hearing is hereby convened in Room 1123, New Post Office Building, Chicago, Illinois, at 10 o'clock, a. m., January 6, 1936.

Mr. Michael: Off the record, Mr. Reporter.

(Discussion outside the record.)

Mr. Gust: It is stipulated and agreed between counsel that respondent's answer to the amended complaint may be deemed to be corrected to show Article 5 of the amendment of the Constitution of the United States, in lieu of Article 6, as it appears in said amended answer.

Mr. Michael: Yes.

Examiner Norwood: I suppose you are familiar with the pleadings?

Mr. Gust: Yes. Among other things, we plead in the answer to the amended complaint that the issues sought to be raised by the amended complaint, are res judicata, and have heretofore been determined and decided by the Court of Appeals, for the Sixth Circuit. A judgment and decree was affirmed by the Supreme Court of the United States, and I have with me a certified copy of the record in the previous case, which I would like to offer in evidence.

Examiner Norwood: You can offer anything when you are putting in your case, or do you want to make a motion for the record here?

Mr. Gust: Yes, I would like to make a motion to dismiss.

Examiner Norwood: Off the record, Mr. Reporter.

-(Discussion outside the record.)

Mr. Gust: If the Examiner please, I would like to make a motion that these proceedings be dismissed for the reasons set up in the answer to the amended complaint, to the effect that the issues sought to be tendered to the respondent and litigated in this proceeding, are the same issues heretofore tendered to the respondent in another proceeding brought by the Commission, which proceedings were reviewed in the Court of Appeals of the Sixth Circuit, and wherein the Court of Appeals for the Sixth Circuit entered a judgment or decree holding void the previous order to cease and desist, entered by the Federal Trade Commission, which decree of the Sixth Circuit Court of Appeals was affirmed by the Supreme Court of the United States. The proceedings to which I have reference, were had in Docket No. 1496, before the Commission, and cause No. 129 in the United States Circuit Court of Appeals.

I have here, and which I would like now to offer in evidence in support of my motion, a certified copy of the transcript of the record before the Federal Trade Com-



mission; a certified copy of the respondent's petition for review filed in the Court of Appeals of the Sixth Circuit; a certified copy of the Commission's answer in the nature of a cross-bill filed in the Court of Appeals for the Sixth Circuit; a certified copy of the answer of the Raladam Company, to paragraphs G and H, of the Commission's cross bill, and also a certified copy of the order or the decree of the Court of Appeals for the Sixth Circuit; a certified copy of the mandate of the Supreme Court of the United States; a certified copy of the order of the Court of Appeals entered on motion of the Federal Trade Commission, to amend the decree, as well as a certified copy of the original decree of the Supreme Court of the United States, and the mandate. This is certified by the United States Supreme Court Clerk, and also a certified copy of the United States Supreme Court order and the Commission's application to modify its decree.

I would like to have those marked as exhibits at this time.

Examiner Norwood: Any objection?

Mr. Michael: Yes, but I have no objection as to having them marked for identification.

Mr. Gust: Yes.

Examiner Norwood: Motion denied for the purpose of this hearing, and they will be passed with the record to the Commission, for its decision, and the proffered exhibits have been marked for identification.

(The papers referred to were marked Respondent's Exhibits 1 to 10, both inclusive, for identification.)

Mr. Gust: May they be received in evidence at this time?

Mr. Michael: I object, Mr. Examiner. In my opinion, the motion presented here is not presented at the proper time, unless it be merely for the purpose of saving the

question. The proffered certified copies of court records are not a part of the evidence in this case. They should not encumber the record as part of the testimony. It is purely a legal question the respondent has raised in his pleadings, and I assume there would be various ways of presenting the same question to the Commission or the court, at the proper time without putting in the transcript of the testimony in that case.

Mr. Gust: If the court please, I don't understand from counsel that he makes any objection as to the authenticity of these exhibits. Am I correct in that?

Mr. Michael: I have no way of knowing, but I assume counsel would not offer anything that was not authentic. I have no technical objection as to that.

Examiner Norwood: The objection is sustained as to receiving them at this time. May it be understood by counsel on both sides that an exception is deemed to have been taken at the proper time, in the event of an adverse ruling?

Mr. Michael: That is agreeable to me.

Mr. Gust: Yes.

Mr. Michael: May we have a short recess, Mr. Examiner?

Examiner Norwood: Yes, we will take a few minutes' recess.

(Whereupon, a short recess was taken.)

Examiner Norwood: Come to order, gentlemen. You may proceed, Mr. Michael.

Mr. Michael: I will call as my first witness, Mr. Hayes.

Edward D. Hayes, called as a witness for the Commission, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Michael:

Q. You may state your full name, Mr. Hayes.

A. Edward D. Hayes.

Q. Where do you live, Mr. Hayes?

A. Detroit, Michigan.

Q. In what business are you engaged?

A. In what is called proprietary medicine business.

Q. Is that a personal business or a corporate business?

A. A corporate business.

Q. What is the name of the corporation?

A. Raladam Company.

Q. Raladam Company?

A. Yes, sir.

Q. Under the laws of what state was that company incorporated, Mr. Hayes?

A. Under the laws of the state of Michigan.

Q. Can you tell the approximate or exact date of incorporation?

A. January 10, 1927.

Q. What is your official position with that corporation?

A. President and general manager.

Q. For how long a period have you occupied those positions?

A. I cannot give the exact date.

Q. Well, approximately:

A. Well, for at least three years.

Q. That is, both the positions of president and general manager?

A. Yes.

Q. Prior to three years ago, approximately what was your official connection with the corporation?

A. General manager, I believe.

Q. General manager?

A. Yes, sir.

Q. And did that position date from the incorporation of

the company up until the time you became president and general manager? In other words, have you been general manager ever since the company was incorporated?

A. I believe so.

Q. Will you please give the names of the other officers of the corporation, at the present time, Mr. Hayes?

A. Agnes L. Hannon; she is secretary and treasurer, and Miss Louise Hayes is vice president. That concludes the list of stockholders.

Q. Are these two officers and yourself the only stockholders in the concern?

A. Yes, sir.

Q. What relation is Miss Louise Hayes to you?

A. Sister.

Q. And in what capacity other than secretary and treasurer is Agnes L. Hannon connected with the company?

A. She is a stockholder.

Q. Does she work in the office?

A. She does.

Q. Is she your secretary?

A. She is.

Q. Is it true, Mr. Hayes, that these two other officers are merely nominal stockholders for the purpose of incorporation?

A. Well, I don't know just how to answer that question.

Q. Well, in other words, are you the principal stockholder and owner?

A. I am.

Q. And their interests are minor as compared with yours?

A. Yes, sir.

Q. Now, prior to the time you were president of the company, was your ownership the same as it is now?

A. No, I don't think so; that is some time ago.

Q. Well, were you then the principal stockholder, too?

A. No, the stock was held by three other people.

Q. But you were a substantial stockholder prior to the time you became president?

A. Yes, sir.

Q. Prior to the time you acquired the principal portion of the stock?

A. Yes.

Q. Now, Mr. Hayes, for historical purposes and background, would you please state whether or not this business was conducted prior to the time of incorporation of the present company?

A. Yes.

Q. It was?

A. It was.

Q. And what individuals or company operated the business prior to the incorporation of the present company?

A. Well, I was the chief stockholder and owner, and there were two others.

Q. And what was the name of the company?

A. Marmola.

Q. Marmola Company?

A. Yes.

Q. The Marmola Company?

A. Yes, sir.

Q. Did it have a "The" on it?

A. I think it did, but I am not sure.

Q. The Marmola Company?

A. Yes.

Q. How long was that company in existence?

A. Since 1907.



Q. And it was succeeded by the present Company?

A. Yes, sir.

Q. Now, was the business that is now conducted by the Raladam Company, and that was formerly conducted by The Marmola Company, conducted prior to the incorporation of The Marmola Company, or did the business start with the incorporation of that company?

A. Well, I don't know. The business may have started before the Marmola Company was organized, but it was only for a very short time, probably not more than thirty days, and maybe not that long.

Q. Have you been connected with the business from its inception?

A. Yes.

Q. And were connected with it even prior to the organization of The Marmola Company?

A. Yes.

Q. And you assisted in the incorporation and organization of The Marmola Company?

A. Yes.

Q. So you have been connected with the business actively from the beginning?

A. Yes, sir.

Q. What product or products does the present Raladam Company deal in?

A. In Marmola prescription tablets and Dilaxin tablets.

Q. How do you spell Dilaxin?

A. D-i-l-a-x-i-n.

Q. Are the Dilaxin tablets a comparatively recent product?

A. No, sir.

Q. How long has your company been dealing in Dilaxin tablets?

A. Ever since it was organized.

Q. Ever since it was organized?

A. Yes.

Q. That is the present company?

A. Yes, sir.

Q. Had it been dealt in prior to that time?

A. It was.

Q. When did that product first start?

A. Well, I cannot give you the date; I don't remember; I cannot tell—several years.

Q. But it does not date back to 1907?

A. No, it does not.

Q. Can you give the approximate time by years?

A. I would be afraid to do that; I might be several years off.

Q. Was it 1920 before it was on the market?

A. No; before that.

Q. Was it as early as 1915?

A. I think so, but I wouldn't say positively.

Q. All right. Mr. Hayes, how long have Marmola prescription tablets been on the market by your company or its predecessors?

A. That is another question; that is pretty hard to answer. I think we put it out in tablet form in 1909 or 1910, say 1910, but I wouldn't state that positively as to the year, but it is about that time.

Q. All right. Well, was it sold in another form prior to that time?

A. Yes.

Q. What form was it in prior to that time?

A. In prescription form, powder, called Marmola Compound.

Q. Was it put up in capsules?

A. No, it was put up in a powder, in a package, I think about a one-ounce package.

Q. Is it a fact that the Marmola Company was organized to sell this prescription, Marmola Prescription or Marmola Compound?

A. Yes.

Q. And that was the only product you had at the time of the organization of the original company?

A. Yes, sir.

Q. And until you introduced Dilaxin tablets, that was the only product handled?

A. Oh, no; we made it afterwards in tablet form.

Q. Yes, but you only had this one product called Marmola?

A. Yes, sir.

Q. Now, where is your office and principal place of business; I mean by that, the company.

A. It is in Room 4-255, General Motors Building.

Q. Detroit, Michigan?

A. Detroit, Michigan.

Q. Is your concern a manufacturing concern?

A. No, sir.

Q. As I understand it, it is purely a selling concern.

A. Well, we are called manufacturers, but we have it manufactured for us.

Q. Yes. You do no manufacturing in your place of business?

A. No, sir.

Q. And you have no manufacturing establishment under your control or ownership?

A. No, sir.

Q. Who makes Marmola for your company?

A. Parke Davis & Company.

Q. Would you give the designation of their business?

A. They are called a pharmaceutical house, manufacturers of medicines.

Q. Pharmaceutical chemists, aren't they?

A. Yes.

Q. Where are they located?

A. In Detroit, Michigan.

Q. Did Parke Davis & Company originate this medicine?

A. No, sir.

Q. As I understand it, they make it entirely on your order?

A. Yes, sir.

Q. And according to your specifications?

A. Yes, sir.

Q. They have nothing to do about saying what goes into it or what does not go into it?

A. Only in an advisory capacity.

Q. How long has Parke Davis & Company been making your product known as Marmola?

A. I cannot tell that; it is probably in this old record.

Q. Well, just approximately.

A. Well, I don't want to guess anything wrong.

Q. Well, it doesn't have to be exact; just the approximate number of years.

A. Well, say from 1923.

Q. 1923?

A. About that.

Q. And at that time, the formula for the product was established, wasn't it?

A. Yes, sir.

Q. And the formula was just turned over to Parke Davis & Company to make the preparation of the tablets in accordance with the formula that was then established?

A. Yes.

Q. Prior to that time, as I understand it, the preparation was made by other concerns, is that correct?

A. Yes, sir.

Q. Your concern never did make it?

A. No, sir.

Q. Did you personally originate the formula of Marmola?

A. No, sir.

Q. Are you a chemist?

A. No, sir.

Q. Are you a pharmacist?

A. No, sir.

Q. Are you a physician?

A. No, sir.

Q. Prior to your connection with this business, had you ever had any experience or training in the medical or pharmaceutical field?

A. No, sir.

Q. Do you know who originated the formula for Marmola?

A. I know the company that did it, but who the individual chemists in that company were that originated the formula, I don't know.

Q. Well, was it originated by the company or merely made by the company?

A. It was originated by the company.

Q. What company was that?

A. Ray Chemical Company.

Q. Ray Chemical Company?

A. Yes.

Q. Where was that located?

A. In Detroit.

Q. Detroit, Michigan?



A. Yes.

Q. What business were they in?

A. The same kind of business Parke Davis is in.

Q. Are they still in existence?

A. No, they are out of business.

Q. How long has it been since they were in existence?

A. Well, they have been out of business for a number of years. Just how long, I don't know.

Q. How large a concern was that?

A. Well, that I could not say. It was a—well, as compared with Parke-Davis, it would be called a small concern.

Q. Were you interested in the Ray Chemical Company in any way?

A. No, sir.

Q. When you or you and your associates started to market Marmola immediately prior to the incorporation of the Marmola Company, who owned this formula?

A. Ray Chemical Company, I suppose.

Q. Well, did they own it at the time that you started to market it?

A. Yes.

Q. They owned the formula?

A. Here is the way the formula was obtained: Mr. C. N. Ray, head of the Ray Chemical Company, and myself, are very close friends, not only he and I personally, but his family and my family, and he brought this formula to me and asked me to put it on the market, and he owned half of the business. He said he would go in with me half, which he did.

Q. That is, half of the business of marketing Marmola?

A. Yes, in the Marmola Company, and then they manufactured the product for us in their laboratories.

Q. But he had the formula, or at least, the company

did, when you went in business with him to market the product?

A. Yes.

Q. And you don't know how it originated or who originated it?

A. No, I do not.

Q. Was Mr. Ray a chemist?

A. I don't know whether he was or not; I don't think so.

Q. Or a pharmacist?

A. Yes.

Q. Or was his connection with the company purely a business connection?

A. Well, I don't know; it was mostly business, I think.

By Examiner Norwood:

Q. Was he a medical doctor?

A. No.

By Mr. Michael:

Q. Now, has the general formula for Marmola remained the same, Mr. Hayes, from the time you first started to market the product until the present time?

A. No, it has been changed.

Q. What changes have been made in the formula, and when?

A. I cannot tell you when.

Q. Well, approximately.

A. I can tell you what changes.

Q. All right.

A. The product, when it was first started, carried a grain and a quarter of desiccated thyroid. That was reduced afterward, I think, within a couple of years, to three-quarters of a grain of thyroid. The reason for this reduction was the scarcity of the product. We had to reduce

it in order to obtain enough of the product to make the tablets with.

By Examiner Norwood:

Q. To supply the demand?

A. Yes. Then, when Parke Davis & Company was given the contract for making the tablets, their head glandular therapy physician told me that their product was much stronger than other thyroid products, and he advised us to reduce the thyroid content to half a grain, which we did.

By Mr. Michael:

Q. That was done under the theory that a half a grain of their product would have the same therapeutic effect as three-quarters of a grain of the other product you were formerly using?

A. Yes, sir. We also eliminated from the product phenolphthalein.

Q. When was that eliminated from the product?

A. Well, it was done during the war, because the product came from Europe, and it was practically impossible to obtain it. But after the war, when we did obtain it, we put it back in again, and later on, we took it out and left it out.

Q. And it is not now in the product?

A. No, it is not.

Q. Does that finish your answer?

A. I think so.

Q. When you were speaking a while ago, I believe you said that originally there was a grain and a half of desiccated thyroid?

A. One and one-quarter grains.

Q. A grain and a quarter?

A. Yes.

Q. That was per dose, is that right?

A. Yes, in each tablet.

Q. In each tablet?

A. Yes, sir.

Q. Is that true of the product when it was put up in powder form, that there was one and one-quarter grains per dose?

A. Yes.

Q. And had there been that amount of desiccated thyroid from the beginning, a grain and a quarter per dose?

A. Yes, sir. I might say, in the Marmola in Great Britain and other foreign countries, it still carries a grain and a quarter.

Q. That is, Marmola, your company ships to those foreign countries?

A. No, we do not ship it. It is manufactured at London.

Q. But for you?

A. Yes.

Q. And your company markets it in foreign countries?

A. Well, we have an agent in London that markets it.

Q. But he is your agent?

A. Yes.

Q. And not an independent dealer?

A. No, sir.

Q. Can you give the approximate date that you last discontinued the use of phenolphthalein?

A. No, I cannot; it has been several years.

Q. Four or five years ago, was it?

A. I think at least four years ago.

Q. Was there any reason for discontinuing this ingredient?

A. Well, Parke Davis & Company thought that there might be too much of a cathartic in the tablets, and they advised doing it, taking it out; that a quarter of a grain of

cascara would be sufficient, and in cases where it was not sufficient for a laxative, that they could use Dilaxin.

Q. I see. The phenolphthalein, then, was placed in the product for its laxative effect?

A. Yes, sir.

Q. So far as you knew, it had no other effect?

A. None whatever that I know of.

Q. Do the Dilaxin tablets have phenolphthalein in them?

A. Yes, sir.

Q. And in recent years, especially, you have stressed the use of Dilaxin in connection with Marmola, have you not?

A. Only when the parties using Marmola are constipated.

Q. But I mean, you recommended—

A. As a laxative.

Q. But you recommended its use with Marmola more strongly than you formerly did, isn't that so?

A. No, I don't think so.

Q. But at one time you did not sell it at all in connection with it?

A. No.

Q. But you recommended it stronger since you left that phenolphthalein out, haven't you?

A. No, I don't think so.

Q. Well, Parke Davis & Company's recommendation in that regard was based, as I understand it, on the belief that a person taking Marmola would take Dilaxin in connection with it and get the laxative effect in connection with Dilaxin?

A. Only in a case where the parties are constipated and one-quarter grain is not sufficient to give the proper bowel movement, then they should resort to Dilaxin.



Q. Now, what is your method of sale, Mr. Hayes?

A. Advertising.

Q. I mean, through what media?

A. The daily papers.

Q. I don't mean the advertising, but through what media do you reach the people who buy Marmola for use?

A. Advertising.

Q. Who sells it to the ultimate consumer?

A. We sell to the jobber and to the retailer.

Q. To both?

A. Both.

Q. And the jobber, in turn, sells to the retailer?

A. Yes, sir.

Q. And the retailers, whether sold to by you or the jobber, sell to the ultimate purchaser?

A. Yes.

Q. How general in the United States is the sale of your product?

A. Well, it is complete.

Q. All over the United States?

A. All over the United States, yes.

Q. Would you say it is handled by drug stores everywhere?

A. Well, I would not say that, but it is what we call—Marmola has a general distribution. Now, you can go into some drug stores and they may be out of it, or not have it.

Q. But it would be available through the wholesale house?

A. Yes, sir.

Q. Now, do you stock Marmola and Dilaxin tablets at your place of business in Detroit, Michigan?

A. Yes, sir.

Q. And do you have a shipping department or is the shipping done from Parke Davis & Company?

A. It is done from our place.

Q. Who packs it in final form, you or Parke Davis?

A. Parke Davis.

Q. It comes to you in final form ready for shipment?

A. Yes.

Q. And you ship it out to wholesale house jobbers and retailers, druggists, and others who buy for resale to the general public?

A. That is correct.

Q. It is all labeled, packed, and cartoned, entirely finished when it comes to you?

A. Well, we put it in a shipping carton.

Q. The large cartons?

A. Yes.

Q. But the individual package is completed by Parke Davis & Company?

A. Yes.

Q. Do you furnish them the labels and small cartons it is in?

A. They manufacture the cartons.

Q. They do?

A. Yes, but we print the matter that goes inside of the package.

Q. And you furnish the labels?

A. No, they furnish it; that is printed right on the back.

Q. And your company ships this when you sell it to wholesale druggists and retailers, wherever they are located in the United States, from your office in Detroit, Michigan?

A. Yes, sir.

Q. Did you ever use a different method of sale than

reaching the purchasing public through wholesale and retail drug houses?

Mr. Gust: When you say "you," you mean the respondent?

Mr. Michael: Yes, the respondent.

Mr. Gust: And by "respondent?" you mean Raladam?

Mr. Michael: Yes.

The Witness: A. We use the very same method in selling the jobbers and retailers now as we did in the beginning; it has not been changed any whatever.

By Mr. Michael:

Q. It has always been for sale to retail and wholesale druggists?

A. Yes.

Q. Did you use any other method of sale at any time?

A. The Raladam Company never used any other method.

Q. Did the Marmola Company?

A. Not to the jobber and retailer.

Q. I mean, was there any other method of selling to the general public?

A. The Marmola Company did.

Q. What method did they use?

A. Well, those who wanted to could order it by mail and we would send it to them by mail.

Q. Has the Raladam Company ever sold it by mail in that way?

A. No, sir.

Q. Why did the Marmola Company quit selling it by mail?

Mr. Gust: That is objected to as being wholly unimportant and immaterial. The complaint alleges that we have been using unfair methods in commerce, since April 17,

1929. He is now going back to what some company who used to manufacture this product and sell it, what their method of doing business was. It is certainly not germane to any of the issues.

Examiner Norwood: I don't see its relevancy.

By Mr. Michael:

Q. Mr. Hayes, I wish you would state why the Raladam Company, in the last four or five years, or since it has been organized, has not pursued the means of selling by mail?

Mr. Gust: That is objected to, also, if the court please, as being wholly immaterial why we did not do something else. The question before us is the propriety of what we did do.

Examiner Norwood: I think, however, in regard to these questions that apply to the respondent during the time covered by this complaint, that we might not be too strict as to letting in this. I don't know counsel's theory, but I don't think that it will do any harm. Objection overruled. Read the question, please, Mr. Reporter.

(Question read as above recorded.)

The Witness: A. The reason was, that when the Marmola Company went out of business, they agreed not to resume that business.

By Mr. Michael:

Q. Agreed with whom?

A. With the Post Office Department.

Q. Did the Post Office Department object to the use of the mails?

Mr. Gust: I object to it as being wholly immaterial what the attitude of the Post Office Department may or may not have been with the Marmola Company. They are not a respondent here. We cannot litigate that, as to whether there was any objection as to the propriety of it.

Examiner Norwood: What have you to say, Mr. Michael?

Mr. Michael: I think it is a part of the historical background of this business, and it is certainly indicative of the uncertainty of the respondent as to its product, even though there is not an issue of that kind.

Mr. Gust: If the court please, we have been, ever since this respondent has been organized, some eight years, we have been pursuing this method of distribution of the product with satisfactory results to the respondent. What other method we might have adopted or could have adopted, whether it would have been good business policy or bad business policy, is certainly not relevant here in these issues.

Mr. Michael: Certainly, Mr. Examiner, it would be relevant if the respondent fears a fraud order.

Examiner Norwood: I think I will overrule the objection. He can tell that if he knows it. Read the question, please.

(Question read as above recorded.)

By. Mr. Michael:

Q. For the purpose of selling Marmola?

A. Direct to the consumer?

Q. Yes.

A. Yes.

Q. So on the raising of that objection, your company, the present company, decided not to pursue that method of sale on account of these objections that were raised by the Post Office Department, and you so agreed, isn't that correct?

Mr. Gust: Same objection.

Examiner Norwood: Objection overruled.

By Mr. Michael:

Q. Is that correct?



A. Partially correct.

Q. Well, just explain it, if it is not.

A. It was that reason and the reason that the retailers objected to stocking a product where the owner sold direct to the consumer.

Q. They always have that objection to the producer of a proprietary medicine selling direct to the public, don't they?

A. I don't know that they always do.

O. Well, that is generally so?

A. It has been of late, since the Raladam Company.

Q. Yes, and they had the same attitude during the time the former company was selling direct to the consumer?

A. I cannot say that they did; there was not the agitation about it at that time.

Q. Mr. Hayes, I wish you would kindly give the present formula of Marmola.

A. The present formula of Marmola is as follows:

1 grain extract Bladderwrack.

$\frac{1}{2}$  grain extract Phytolacca.

$\frac{1}{4}$  grain extract cascara sagrada, Rx. 87 Spec.

$\frac{1}{2}$  grain desiccated thyroid.

16/1000 min. oleoresin ginger. Po. saccharum special.

3 grains calcium carbonate precipitated.

1/24 min. methyl salicylate.

1/24 min. oil anise.

1/24 min. oil sassafras.

Talc Brown.

Ivory Black.

Aqua for extracts.

Po. Burnt Umber

Red Oxide of Iron

Syrupus Simplex.

Aqua for Granulating.

Liquid Petroleum colorless.

Examiner Norwood: We will take a short recess.

(Whereupon, a short recess was taken.)

Examiner Norwood: The hearing will come to order.

By Mr. Michael:

Q. Now, Mr. Hayes, this formula which you have just given, of Marmola, represents the proportion of ingredients per tablet or dose, is that correct?

A. Yes, sir.

Q. In this formula as given, there are a number of ingredients for which there is no proportionate part designated, or quantity. Are those therapeutic ingredients or ingredients that are placed in the product for other purposes?

A. They are.

Q. Which?

A. They are placed in there for other purposes, for the making.

Q. For the making or the flavor, or something of that kind, or the color?

A. Yes, a base to carry—

Q. The therapeutic ingredients?

A. Yes.

Q. What are the directions for taking Marmola that are given to those who purchase it?

A. Well, one tablet after each meal, and one before retiring.

Q. Are there any variations in the dosage or the time for taking it, directed by your company, or is that the general direction given to all?

A. That is the general direction given to all.

Q. For what purpose is Marmola sold by your company, Mr. Hayes?

A. For the purpose of reduction of fat or obesity, a treatment for obesity.

Q. What ingredients in Marmola do you contend cause reduction of obesity?

Mr. Gust: If the court please, I don't think it is for this witness to contend. After all, he is the government's witness, and the contentions are made by our answer, wherein we contend that every active ingredient that is not placed there to serve some manufacturing purpose, has a therapeutic effect in the treatment of obesity; that is our contention.

Mr. Michael: The question here is a little different; not as to the therapeutic effect, but as to what ingredients are active ingredients in the reduction of obesity.

Examiner Norwood: I take it that the question goes to his recommendation.

Mr. Michael: Yes.

Examiner Norwood: He is not being asked as an expert?

Mr. Michael: Not as an expert; just merely their contention.

Examiner Norwood: Objection overruled. Read the question.

(Question read as above recorded.)

The Witness: A. It is a combination of these different foods or drugs.

By Mr. Michael:

Q. Does your company contend that any specific ingredients in that medicine have reducing properties in themselves?

A. Yes.

Q. Which ones?

A. Extract of bladderwrack, extract of phytolacca, desiccated thyroid and extract of cascara sagrada, com-

combined with them, works to a reduction of flesh for the treatment of obesity.

Q. That is the first four names, that you named in the formula, the first four ingredients?

A. Yes, sir.

Q. That your company contends that each one of those ingredients has a reducing effect upon the body?

A. When they are combined together.

Q. Does your company contend that each one taken separately has a reducing effect?

A. We would contend that two of them do.

Q. Which ones.

A. The extract of bladderwrack and desiccated thyroid.

Q. Now, you sell Dilaxin tablets in the same manner and through the same channels that you sell Marmola, generally speaking, is that correct?

A. Yes, that is sold through the drug trade.

Q. Do you sell each product separately or are they sold in combination.

A. They are sold separately.

Q. Do you enclose a sample of Dilaxin with the Marmola package?

A. We do.

Q. How many doses are in that sample?

A. I think there are four tablets?

Q. Four tablets?

A. Yes.

Q. Do you have any way of knowing whether the people who buy Marmola usually buy and use Dilaxin in conjunction with it?

A. Well, we have no contact with the consumer. All we can judge by is the orders we receive from jobbers and retailers.

Q. Would your sales indicate such sales in combination?

A. Well, there have been certain territories in the country, when we would cease advertising Marmola altogether, and the sale for Dilaxin in the territory went up. So we would conclude from that that the public bought Dilaxin to use for its laxative effect.

Q. Separate from Marmola?

A. Separate from Marmola.

Q. Well, in those instances where you cease advertising, your sale of Marmola continues, too, doesn't it?

A. No, it does not.

Q. Well, there is still a sale for it.

A. There is a very small one; it drops right off.

Q. Do you publish the formula for Dilaxin?

A. I don't think we do.

Q. Is it a secret formula?

A. There is nothing secret about it; it is not published.

Q. Is it such a matter that you would object to putting it in the record?

Examiner Norwood: Off the record, Mr. Reporter.

(Discussion outside the record.)

By Mr. Michael:

Q. Mr. Hayes, am I right in my understanding that Dilaxin is purely and exclusively a laxative or cathartic?

A. It is.

Q. It has no other therapeutic effect, so far as you know?

A. No.

Q. And you do not contend it has any other effect?

A. No.

Q. Is that a mild cathartic or a strong cathartic?

A. Mild.

Q. You have already testified that it had phenolphthalein in it?



A. Yes, sir.

Q. Is that correct?

A. Yes.

Q. I understand, also, it has cascara sagrada in it?

A. Yes.

Q. Is there any other laxative product that you know of in that medicine?

A. There are others, but I cannot name them.

Q. I thought you named one a while ago.

Mr. Gust: No, he didn't name any others.

By Mr. Michael:

Q. And that medicine, Dilaxin tablets, is sold by your company exclusively as a laxative or cathartic?

A. Yes, sir.

Q. Let me ask you this question about it, merely for clearing up the record: do your directions or instructions as to dosage vary in proportion to the condition of the person taking it?

A. Yes, sir.

Q. For the relief of constipation?

A. Yes.

Q. It has no set dosage?

A. No, sir.

Q. Do you advertise Dilaxin tablets separately from Marmola prescription tablets?

A. No, sir.

Q. It is all in conjunction, the advertising of the two products?

A. The only advertising that is given to Dilaxin is the sample enclosed in the Marmola package.

Q. You do not advertise that in the published advertisements of Marmola?

A. No, sir.

Q. And you have no separate advertising for Dilaxin tablets?

A. No, sir.

Q. But you do enclose a sample in Marmola, and descriptive literature?

A. Yes, sir.

Q. Mr. Hayes, I believe that you have been requested to bring with you samples of Marmola and the packages and enclosures that have been used by your company in the last few years.

A. Yes, sir.

Q. Did you bring those?

A. Yes, sir.

Q. Do you have them here?

A. Yes, sir.

Q. Mr. Hayes, I will hand you this package of Marmola, which I will ask the reporter to mark for identification as Commission's exhibits, for the various parts of the package and enclosure, for the carton, Commission's Exhibit 1-A, the pasteboard carton, and Commission's Exhibit 1-B, for the Marmola tablets enclosed; and Commission's Exhibit 1-C for the envelope and enclosure containing the samples of Dilaxin, and Commission's Exhibit 1-D, for the booklet, and Commission's Exhibit 1-E for the circular.

(So marked.)

Q. Now, I wish you would state, Mr. Hayes, the approximate time during which Marmola was marked in the form and with the enclosures as represented by these exhibits which have just been marked for identification.

A. July 1, 1922.

Q. To when?

A. To October 1, 1933.

Q. 1933?

A. Yes, sir.

Q. That is approximately 10 years, is that right?

A. Yes.

Mr. Michael: Mr. Examiner, I now offer in evidence these exhibits which have been marked for identification as Commission's Exhibits Nos. 1-A, B, C, D and E.

By Examiner Norwood:

Q. These are your products as described and identified, are they?

A. Yes, sir.

Examiner Norwood: They are received in evidence and marked.

(The articles referred to were marked Commission's Exhibits Nos. 1-A to 1-E, both inclusive, and received in evidence.)

By Mr. Michael:

Q. Mr. Hayes, during all that period of approximately 10 or 11 years, were the enclosures and printed matter, printed circulars, and so on, the same?

A. Well, practically the same. There might have been some little change made in the booklet.

Q. The pink circular was enclosed during all of the period?

A. I believe so.

Q. And a sample of Dilaxin?

A. Yes, sir.

Q. And the only thing you don't know is whether there might have been some minor changes in the booklet?

A. Yes, sir.

Q. But the printing on the carton was all the same during that period?

A. Well, I believe so.

Q. Yes. Now, Mr. Hayes, I will hand you this package of Marmola, which I will ask the reporter to mark for identification as to its respective parts, Commission's Ex-

hibit Nos. 2-A—No. 2-A for the pasteboard carton; Commission's Exhibit No. 2-B for the medicine enclosed; Commission's Exhibit No. 2-C for the envelope and enclosures of Dilaxin, and Commission's Exhibit No. 2-D for the booklet enclosed, and Commission's Exhibit No. 2-E for the pink circular.

(So marked.)

Q. I will ask you to examine this package of Marmola in its entirety and state if you can the period of time during which that package with the same enclosures and the same printing all the way through, was used by the company.

A. This package was adopted October 1, 1933, and this is the package that is now in use.

Q. It had been used like that all during that period?

A. I believe that this booklet, when it was rewritten or rearranged, rather, about a year ago or more, that that part that describes Dilaxin was moved to the front part of the book, where formerly I think it was in the middle or the back end of the book.

Q. But the wording was not changed?

A. I don't believe so, and aside from that, everything is the same.

Q. Now, have there been other styles of packages or enclosures in use by your company than these two?

A. No, sir.

Q. Now, Mr. Hayes, have there ever been other enclosures or other circulars that were sent out with Marmola by your company, than those in these two packages?

A. Not to my knowledge. I don't believe there have been any.

Q. Do you have available the form of booklet that you referred to in regard to Commission's Exhibit 1-D, where other wording was used?

A. I do not think there was ever any change in that.  
Did I say there was?

Mr. Gust: Off the record, please.

(Discussion outside the record.)

By Mr. Michael:

Q. Do you now remember, Mr. Hayes, what changes you referred to when you spoke of changes that were possibly made in the booklet marked Commission's Exhibit 1-D?

A. No, I do not.

Q. Now, Mr. Hayes, in your answer filed in this case, it is admitted that at one time one of the circulars enclosed in the package of Marmola, or the booklet enclosed, had this statement in it:

"We feel a responsibility to those who buy Marmola; and we wish them to know all the facts at our command. Here we present them and we urge every user to read them. You should know what to expect and why to expect it; you should know what you are taking and why. This little pamphlet will tell you in the best way we know. Please read it."

Do you recall that quotation?

A. Yes, sir.

Q. Was that used at one time in the booklet.

A. Yes, sir.

Q. Is it in one of these that you have just identified?

A. I think it is.

Q. Which one?

Mr. Gust: Off the record, please.

(Discussion outside the record.)

Mr. Michael: Mr. Examiner, I offer in evidence the exhibits that have just been identified by the witness and marked for identification as Commission's Exhibits Nos. 2-A, B, C, D and E, respectively.



Examiner Norwood: They are received in evidence as marked.

(The articles referred to were marked Commission's Exhibits Nos. 2-A to 2-E, both inclusive, and received in evidence.)

By Mr. Michael:

Q. Mr. Hayes, the quotation I just read to you, as given in your answer, or in the company's answer; when I say "you" I refer to the company, if you will pardon my inexactness, was that used by you in the booklet, or in a separate circular in the package?

A. I believe it was in the booklet.

Q. And during what period of time was that paragraph used?

A. Well, I cannot remember that.

Q. Approximately?

A. I cannot even do that.

Q. Is there any way that you could ascertain that?

A. It might be possible to find out, if I was in my office.

Q. Do you have any of the booklets or circulars which contain that paragraph?

A. I don't know whether I have or not. I remember the paragraph, however, and I am quite sure Mr. Hopkins wrote it. However, he is dead.

Q. And that might have been, what you mean to say, that might have been one of the changes that you referred to a while ago, in the booklet, that paragraph?

A. It might.

Q. Do you have any definite recollection as to when or why it was discontinued?

A. No, I haven't, only the policy of one writer over another. To my mind, I would never have changed the booklet, if it was up to me, but when I employ a copy writer

and advertising agency, they take out a paragraph or something that they think should be written different, and in order that they won't have any come-back at me for any failure in their advertising policy, I have always permitted them to make little changes, but nothing material.

Q. I see. All right. How recently do you recall the booklet having been used, or the circular having this paragraph in?

A. Well, the booklet was rewritten some time between June 1, 1933, and December, 1933, and that paragraph might have been left out of the booklet at that time.

Q. In 1933?

A. Yes, but I am not positive of that.

Q. Which would indicate, wouldn't it, that there have been at least two revisions, another revision either before or after that date, wouldn't it?

A. Not after 1933. There has been only one.

Q. There have been no revisions since 1933?

A. There has in 1934, when we had some new booklets printed.

Q. I see.

A. But this paragraph that you speak of evidently was not there then.

Q. But it had been in use as recently as 1933?

A. Yes, sir.

Q. And you would have no way of knowing how much of a supply of Marmola has been in the hands of retailers or wholesalers since that time that had that paragraph in, have you?

A. No I have not.

Q. A package of that kind might still be on sale?

A. It might.

Q. Mr. Hayes, would it be inquiring too intimately into

the business to ask you to give an approximation of the extent of the Marmola business by volume or value?

Mr. Gust: I object to that, if the court please. The witness already testified it is on sale in practically every state in the Union.

Examiner Norwood: Well, as a matter of public interest, if he can give the approximate volume.

Mr. Michael: Yes; I don't want to inquire into the intimate details, but just to indicate its size.

Mr. Gust: Do you mean by that, at the present time?

Mr. Michael: Yes, at the present time.

Mr. Gust: Or for the last eight years.

Mr. Michael: The volume per year, or something of that kind.

Examiner Norwood: Objection overruled. He may answer that.

Mr. Michael: Just a general statement.

The Witness: A. Say over a period of five years?

By Mr. Michael:

Q. Well, however you would rather put it.

A. Well, I think for the last five years it has run around—I don't like to make a statement unless I know it; I haven't got it here.

By Examiner Norwood:

Q. Can you give an estimate?

A. Between 350 and 400 thousand dollars.

By Mr. Michael:

Q. For the entire period?

A. No, no; per year, for the five-year average.

By Examiner Norwood:

Q. What did the packages retail for?

A. \$1.

By Mr. Michael:

Q. Mr. Hayes, I believe you were requested to furnish at this hearing, a copy of all your advertising material, including radio continuity, used since April 27, 1929, by your company?

A. Yes, sir.

Q. Do you have those here?

A. I haven't got all the advertising; I wouldn't want to say that I had all the advertising copy here, but I have got the most of it.

Mr. Michael: Off the record, please.

(Discussion outside the record.)

By Mr. Michael:

Q. Mr. Hayes, I will hand you these exhibits representing advertising proof copy used by the Raladam Company, which are marked Commission's Exhibits Nos. 3-A, 3-B, 3-C, 3-D, 3-E, 3-F, 3-G, 3-H, 3-I, 3-J, 3-K, 3-L, 3-M, and 3-N, all attached together.

(So marked for identification.)

Q. I will ask you to state whether this is radio advertising copy as used by the Raladam Company some time during the period since April 27, 1929, to date.

Mr. Gust: Off the record.

(Discussion outside the record.)

Examiner Norwood: Do you offer those in evidence, Mr. Michael?

Mr. Michael: Yes.

Examiner Norwood: They are received as marked.

(The papers referred to were marked Commission's Exhibits Nos. 3-A to 3-N, both inclusive, and received in evidence.)

Mr. Michael: Now will you read my question, please?

(Question read as above recorded.)

The Witness: A: I identified this copy as copy that was run by the Raladam Company.

By Mr. Michael:

Q: Can you tell during what period?

A: I cannot say from my own memory that this was run in 1929, but I believe so.

Q: Or since that time?

A: Yes.

Q: And as I understand it, you made an effort to segregate the advertising that was used after the date that I just specified?

A: Yes, sir.

Q: Mr. Hayes, I will hand you these copies of advertising proof copy of the Raladam Company, marked Commission's Exhibit 4-A, 4-B, 4-C, 4-D, 4-E, 4-F, 4-G, 4-H, 4-I and 4-J, and I will ask you to state whether these represent advertising copy used by the Raladam Company in magazines and newspapers, at some time during the period from April 27, 1929, to date?

A: Yes, sir.

Q: During what period of time was that advertising copy used?

A: It was used during 1933, and some of it was used before that.

Q: How far before; more than a year before, or just perhaps a few months before 1933?

A: Well, I think that was all prepared by Ruth, Roth & Ryan, and that was run in 1933.

Q: I see. So the exhibits that were marked 3, No. 3 in series, were used up until approximately 1933?

A: I think so.

Q: Yes, during several years.

A: Yes, sir.

Mr. Michael: Mr. Examiner, I offer in evidence these



exhibits which have been marked Commission's Exhibits Nos. 4-A to 4-J, both inclusive.

Examiner Norwood: They are received as marked, (The papers referred to were marked Commission's Exhibits Nos. 4-A to 4-J, both inclusive, and received in evidence.)

By Mr. Michael:

Q: Mr. Hayes, I hand you this file of advertising proof copy, which have been marked Commission's Exhibits 5-A, 5-B, 5-C, 5-D, 5-E, 5-F, 5-G, 5-H, 5-I, 5-J, 5-K, 5-L, 5-M, 5-N, 5-O, 5-P and 5-Q, and ask you to state whether those all represent advertising copy used by the Raladam Company in newspapers and magazines, some time during the period from April 27, 1929, to date?

A: These advertisements were used in the year 1934, and up to October 1, 1935.

Mr. Michael: Now, Mr. Examiner, I offer in evidence these exhibits that have been identified as Commission's Exhibits 5-A to 5-Q, both inclusive.

Examiner Norwood: They are received as marked. (The papers referred to were marked Commission's Exhibits Nos. 5-A to 5-Q, both inclusive, and received in evidence.)

By Mr. Michael:

Q: Mr. Hayes, I hand you this file of advertising proof copy of the Raladam Company, which has been marked Commission's Exhibits 6-A, 6-B, 6-C, 6-D, 6-E, 6-F, 6-G, 6-H, and 6-I, and ask you to examine it and state whether or not that was some advertising copy used in newspapers and magazines by the Raladam Company, at some time during the period from April 27, 1929, to date.

A: This copy was used only in just, I think eight different times, testing out the copy.

Q: I see. During what period?

A: Well, it began in April, 1935. Then, on October 1, the copy No. 468-M was used from October 1, until December 15, 1935.

Mr. Michael: All right, Mr. Examiner, I offer in evidence these exhibits which have been marked Commission's Exhibits 6-A to 6-I, both inclusive.

Examiner Norwood: They may be received as marked. (The papers referred to were marked Commission's Exhibits Nos. 6-A to 6-I, and received in evidence.)

By Mr. Michael:

Q: In regard to these exhibits which have been marked 6-A to 6-I, inclusive, were those in the newspapers or magazines?

A: Newspapers.

Q: In certain localities?

A: Yes.

Q: In different states in the United States.

A: Yes.

Q: Now, the various exhibits which you have just identified as being advertising copy, the various series of exhibits, were those copies of advertising literature that was inserted in magazines and newspapers generally throughout the United States?

A: Just in newspapers.

Q: Just in newspapers?

A: Yes.

Q: Were any of them printed in magazines?

A: No, sir.

Q: Any of these?

A: Oh, yes, some of them.

Q: I am talking about the whole group.

A: Oh, the whole group, yes.

Q: Yes. And does your account call for the insertion

of at least some of your materials in practically every newspaper in the United States?

A: No.

Q: All the leading newspapers?

A: I wouldn't say so, no.

Q: What class of newspapers do you generally advertise in?

A: Daily newspapers.

Examiner Norwood: Gentlemen, we will recess now until 2 o'clock, p. m.

(Whereupon, a recess was taken at 12:45 p. m. to 2 p.m.)

## AFTERNOON SESSION

2 p. m.

Examiner Norwood: The hearing will come to order.

Mr. Michael: Mr. Examiner, according to our conversation at the time of adjournment for lunch, I indicated there were witnesses subpoenaed for 2 o'clock, and that Mr. Hayes' examination might take considerable time, but since he will be here, if it is agreeable to respondent's attorney, we will excuse Mr. Hayes until we examine these other witnesses that are here.

Mr. Gust: You want Mr. Hayes to remain in any event, do you?

Mr. Michael: Well, yes. I think I can finish with him after I get through with these witnesses.

Mr. Gust: Today, you mean?

Mr. Michael: Yes, or at most, in the morning.

Mr. Gust: All right.

Mr. Michael: Off the record, please.

(Discussion off the record.)

Examiner Norwood: Then we will excuse you temporarily, Mr. Hayes.

(The witness was withdrawn.)

Mr. Michael: We will call Mrs. Mary E. Boyer.

MRS. MARY E. BOYER, called as a witness for the Commission, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hornibrook.

Q: Will you state your full name, please?

A: Mrs. Mary E. Boyer.

Q: Where do you reside, Mrs. Boyer.

A: Battle Creek.

Q: Michigan?

A: Battle Creek, Michigan.

Q: Which one, if any, firm are you connected with there?

A: F. J. Kellogg Company.

Q: Is that a corporation?

A: No, a partnership.

Q: Are you one of the partners.

A: I am.

Q: Who are the others?

A: Floyd R. Perkins, Chicago.

Q: What business is the Frank J. Kellogg Company engaged in?

A: Medical mail order.

Q: Do you manufacture your own medicine?

A: We do not.

Q: Who manufactures them for you?

A: Parke Davis & Company, Detroit, Michigan.

Q: Do you sell any treatment for obesity?

A: We do.

Q. How many?

A: Two.

Q: What are they called?

A: Kellogg Rational Treatment for Obesity, and the other is known as C. C. N. T., that does not contain any thyroid.

Q: The Rational Treatment for Obesity does contain thyroid.

A: Yes.

Q: How much?

A: One-sixth grain to each tablet.

Q: And the other is what?

A: C. C. N. T.

Q: You say that does not contain thyroid?

A: No, it does not.

Q: They are manufactured, you say, by Parke Davis, and then they are sent to you at Battle Creek by them?

A: Yes, sir.

Q: And when you receive orders for these two medicines, they are shipped in the state of Michigan and to people outside of the state?

A: Yes.

Q: To the users?

A: Yes.

Q: Have you advertised these medicines?

A: We have, yes.

Q: Up until what time?

A: I think three years last September is the last ad. Well, we placed one ad just for trial, but that is the last of our advertising campaign?

Q: Through what media did you advertise?

A: Newspapers, daily, usually.

Q: In what cities?



A: Well, distributed all over—Chicago and we took all the good newspapers.

Q: In the large cities?

A: The large cities.

Q: And you discontinued that, you say, when?

A: September, three years ago.

Q: Why did you do that?

A: Because it was not paying.

Q: Up until three years ago, had your business for the sale of these medicines been extensive?

A: Well, before that it was, yes. Of course, gradually, up to that time it was dropping down.

Q: Approximately, how much was it a day?

A: How much a day?

Q: Yes.

A: Well, of course, years ago it was up more than \$500 a day, but that is some time ago.

Q: How much was it when you ceased to advertise?

A: Well, it dropped down to an average of around from \$80 to \$100.

Q: And what is it averaging now?

A: Well, some days, \$50 to \$75, and some days not so much.

Q: What does the Chocolate Non-Thyroid Obesity Remedy sell for?

A: Well, the same as the others, the regular price is \$1 a box, six boxes for \$5.

Q: What is the Rational Treatment; what does that sell for?

A: The same thing.

Q: The same price?

A: Yes.

Q: \$1 a box?

A: Yes.

Q. Is the Chocolate Non-Thyroid the same remedy as you gave the initials for?

A. Yes.

Q. How long have you been selling these two remedies?

A. Well, since—the one, Rational Treatment for Obesity, I think we started in either in 1902 or 1903; I think it was in those two years when we started.

Q. And the Chocolate Non-Thyroid.

A. Well, that we have been selling about 10 years, I think, for 9 or 10 years.

Q. Do your customers for these remedies extend throughout the United States?

A. Yes, they do.

Q. Could you give us an estimate of how many you have had in the last, say the last 5 years?

A. I just couldn't; we have about thousands of people; I couldn't tell how many; it is impossible to tell.

Q. And you shipped these customers throughout the United States, these medicines from your place in Battle Creek, Michigan?

A: Yes.

Mr. Hornibrook: I think that is all.

Examiner Norwood: Cross-Examine.

#### Cross Examination

By Mr. Gust:

Q. Is it Miss Boyer or Mrs. Boyer?

A. Mrs. Boyer.

Q. You say that you have been in business since about 1902?

A. Since 1900.

Q. Since 1900?

A: Yes.

Q. And you do what we commonly call a mail order business?

A. Well, it is a mail order business; it is not done in the way the average mail order business is.

Q. What I am getting at, you sell direct to the users?

A. Yes.

Q. And you do not sell to drug stores or jobbing drug trade?

A. No, we do not.

Q. And that has been your method of operation ever since the beginning, has it?

A. Practically.

Q. Now, you say you have two remedies that you sell?

A. Yes.

Q. Only two?

A. Only two for obesity.

Q. Do you have other remedies for other things besides obesity?

A. Yes, sir.

Q. Proprietary remedies?

A. Yes.

Q. What other proprietary remedies do you have?

A. Bladder weakness.

Q. What else?

A. Well, we have had different things in the past. Those are the only ones we are working on at the present time.

Q. In the past you have had remedies for other things, too?

A. Yes.

Q. Along what lines?

A. Well, we have had, what you might say, like along the tonic line.

Q. What tonic did you sell?

A. Gaduetts.

Q. And along what other lines have you had remedies?

A. Well, laxative remedies.

Q. You have laxatives?

A. Yes.

Q. And what else?

A. Well, a long time ago we had a rheumatism remedy.

Q. A rheumatism remedy?

A. Yes.

Q. What else did you have?

A. We had one for eczema.

Q. I see. Now, you sell these remedies to be purchased by the purchaser without any prescription from a doctor, don't you?

A. Not on obesity; on obesity, the doctor takes care of those.

Q. Doctor who?

A. Dr. Parker.

Q. Who is Dr. Parker?

A. She is a physician in our office.

Q. You have a physician in your office?

A. Yes.

Q. And you have this physician answer the mail that comes in on obesity, is that the way you do it?

A. Well, not the regular mail. She looks over the orders that come in.

Q. The orders?

A. Yes.

Q. What was the doctor's name again?

A. Dr. Parker.

Q. What is her first name?

A. Dr. Helen Parker.

Q. Have you any samples of your advertising that you have done for your thyroid compound?

A. I haven't any here.

Q. Do you have some at Battle Creek?

A. Yes, sir.

Q. You keep them there, do you?

A. We keep a record of them.

Q. Keep a record of them?

A. Yes.

Q. You say this Kellogg's Rational Treatment contains one-sixth grain of thyroid?

A. Yes, each tablet.

Q. How many tablets do you put up in a box?

A. Well, there are six tablets to a dose, and four doses daily.

Q. Six tablets to a dose?

A. Yes.

Q. And four doses daily?

A. Yes, sir.

Q. And that is the recommendation of the dosage that you put on your carton or label, or whatever you put it on?

A. I don't understand.

Q. How do you put it up in the carton?

A. Little bottles, and the bottle goes in a carton.

Q. Have you got a sample with you?

A. No, I have not.

Q. Are there any directions on the outside of this carton?

A. I think the directions are on the label of the bottle.

Q. You think the directions are on the label of the bottle?

A. Yes, sir.

Q. Do you recall what they are?

A. Well, yes, I have one of the labels, if you want them.



Q. If you will let me see that, please.

A. Yes.

Q. This is called "Kelloid."

A. Yes.

Q. Well, this label states that it is guaranteed to contain no thyroid.

A. Well, I got the other label. I thought I was bringing the thyroid label. That is the other one.

Q. It is called Kellogg's Rational Treatment for Obesity?

A. Well, they both are called Kellogg's Rational Treatment for Obesity. One we designate as Kellogg, and one is designated as C. C. N. T.

Q. Which one is designated as C. C. N. T.?

A. The one that does not contain thyroid.

Mr. Gust: I will ask to have this marked as respondent's exhibit 11, for identification.

Examiner Norwood: It may be so marked.

(The label referred to was marked Respondent's Exhibit 11, for identification.)

By Mr. Gust:

Q. This little label which you give me has been marked Respondent's exhibit 11 for identification. Is this respondent's exhibit 11 the only label you brought with you, Mrs. Boyer?

A. Yes, it is.

Q. Well, I don't see any C. C. N. T. on there anywhere.

A. Well, we designated it as C. C. N. T. This label goes on Kellogg's but C. C. N. T., when we put that in the bottle, we put the chocolate-coated tablets, which we designate as C. C. N. T.

Q. Do I understand that there is nothing on the outside of the bottle which says C. C. N. T.?

A. This is the label that goes on the bottle. I cannot say what is on the carton right now.

Q. This C. C. N. T. is the private designation of your own, is that what I understand?

A. It is the way we know those tablets, one from the other. The patient that goes without thyroid gets C. C. N. T.

Q. Well, I don't see anything—you don't have a sample of your thyroid label, do you, the one that does contain thyroid?

A. No, I don't have it with me.

Q. Well, both treatments are called "Kelcids," is that right, Mrs. Boyer?

A. Yes, sir.

Q. And they are both called Kellogg's Rational Treatment for Obesity, is that right?

A. Yes.

Q. Did you ever sell it through the drug trade?

A. No, sir.

Q. You never did?

A. No.

Q. What do you put in your non-thyroid tablets?

A. Well, that has several ingredients in it.

Q. What are they?

A. Well, I couldn't name all of them to you. The white iodine is one.

Q. And what else?

A. I cannot name them all.

Q. You cannot name them?

A. No, I cannot.

Q. Can you name any more of them?

A. No, I cannot.

Q. Do you have the formula at your office in Battle Creek?

A. Oh, yes.

Q. Would you have any objection to giving it to us?

By Examiner Norwood:

Q. If it is a trade secret, you would not have to give it, Mrs. Boyer?

A. Well, of course, nobody likes to distribute their formulas, as far as that goes.

By Mr. Gust:

Q. Would you care to give us the ingredients, without giving the precise percentages or something of that sort?

A. I don't know as that would do any harm.

Q. How about the formula for your thyroid preparation, do you have it with you?

A. Do I?

Q. Yes.

A. Yes, I have.

Q. You have the formula for your thyroid?

A. Yes.

Q. Do you have any objection to disclosing that?

A. Well, is it necessary to have that formula?

Q. Well, the examiner, I think, instructed you that if it was a trade secret that you did not want to disclose, you would not have to give it.

By Examiner Norwood:

Q. Is it a secret formula not put on the bottle and not announced to the public?

A. No, it is not.

Q. It is not announced to the public?

A. No.

Q. It is kept a secret?

A. Yes.

Examiner Norwood: Well, you see, in many cases, to disclose that—

Mr. Gust: I take it the witness is privileged to disclose it or not to disclose it.

Mr. Hornibrook: She ought to be instructed as to the law, though; so she does not feel that she is under compulsion.

Mr. Michael: I think that she indicated that she does not desire to disclose it.

Mr. Hornibrook: We have no objection to the disclosure if she cares to.

By Mr. Gust:

Q. How about the formula of the thyroid preparation, do you prefer not to give it?

A. I prefer not to.

Q. You prefer not to disclose it?

A. Yes.

Q. You have no objection to saying that it contains thyroid, though?

A. No, not at all.

Q. Do you have any objection to saying whether or not it contains laxatives?

A. The laxatives are separate.

Q. Then the thyroid preparation contains no laxative preparation at all, is that right, or don't you care to say?

A. Well, I would rather not say.

Mr. Gust: All right.

Mr. Michael: Off the record, please.

(Discussion outside the record.)

The Witness: Our formulas are on record in Washington.

By Mr. Gust:

Q. Are they patented formulas?

Mr. Michael: There are no patents on formulas.

Mr. Gust: I guess that's right.

By Mr. Gust:

Q. How do you mean, they were on record in Washington?

A. Well, when you got your serial number way back in 1906, you had to give your formula.

Q. As I understand it correctly, in your method of dispensing these medicines, if the purchaser saw one of your advertisements in the paper, he would write in to Battle Creek, order a box of Kellogg's or Kelloggs' Rational Treatment for Obesity, is that the way it originates?

A. Well, our ad would be for literature and samples; it would not be for the treatment itself. It would be for a sample and literature pertaining to the treatment.

Q. Did you tell the price of your product in your ad?

A. No.

Q. You did not tell that?

A. No.

Q. Then, if I saw your ad and wrote to you, you would send me back some literature and a sample, is that right?

A. Yes, sir.

Q. Of Kellogg's Rational Treatment for Obesity?

A. Yes, you would get a thyroid sample.

Q. I would get a thyroid sample?

A. Yes.

Q. How big a sample would I get?

A. One day's treatment.

Q. That would be how many tablets?

A. Twenty-four tablets.

Q. And then, if I wanted some more, you would give me an order blank or something to order a package?

A. We would give them an order blank, and with this sample goes a questionnaire which they are supposed to fill in when they order.



Q. Have you got a sample of that with you?

A. No.

Q. Then they fill in this questionnaire and send it with the order to Battle Creek?

A. Yes.

Q. And send the money along with it, is that right?

A. Usually.

Q. And then you fill the order and send them back a package of Kellogg, do you?

A. Well, when that questionnaire comes in, that is handed to Dr. Parker, and after looking the questionnaire over, perhaps she will write to them before she sends it. Perhaps she will send it right along.

Q. Depending on what the questionnaire says.

A. Yes.

Q. I see. And then, after the buyer gets that package, if he wants some more, he sends in a re-order with another dollar, does he, and whatever it happens to be?

A. Yes, sir.

Q. How many tablets are put up in your package, 63?

A. That is the non-thyroid, 63.

Q. How many in the thyroid?

A. That would be seven times 24.

Q. Seven times 24. That is a week's treatment?

A. Yes.

Q. As I understand, you quit advertising about three years ago?

A. Yes.

Q. About 1932.

A. Yes.

Q. That is, you quit advertising both the thyroid treatment and the non-thyroid treatment?

A. Yes.

Mr. Gust: Off the record, please.

(Discussion outside the record.)

Mr. Gust: Mr. Examiner, I would like to cross examine this witness further with reference to these preparations sold by her company, when she has before her the product itself, and advertising material, and other data to which she has referred. I think it is germane to the direct examination and proper cross-examination.

Examiner Norwood: The witness does not appear to have these papers here.

Mr. Michael: Mr. Examiner, may I interpose an observation?

Examiner Norwood: Yes, Mr. Michaels.

Mr. Michael: The Examiner may recall, this witness was not asked as to the contents of any advertising. She was merely asked if, at one time they had advertised, showing the nature and extent of the business; merely preliminary questions. Nothing was asked about the contents of the advertising. I don't see how it is pertinent to any cross-examination.

Mr. Gust: On my brother's theory, it might not be, but on my theory, it is distinctly material to disclose the nature of the competition. This witness is obviously sworn by the Commission as an alleged competitor of the Raladam Company. That is the only purpose of bringing her here, and I want to show the nature and extent of this competition and the method and nature of this witness' doing business. I think I have a right to do that.

Examiner Norwood: You can bring that out on the cross-examination here. Cross-examine her as thoroughly as you wish, and you can also bring it out by introducing your own evidence, or introducing this witness later on as your own witness, but if she has not those papers

here, she hasn't. I don't know what we can do about it except to make what cross-examination we can.

Mr. Gust: I was about to suggest, if the court please, that when I concluded such cross-examination as I could make under your Honor's suggestion, that when we convene at a later date and this witness' testimony is taken, it is understood it is a continuation of my cross-examination and I am not putting her on as my witness.

Examiner Norwood: If it does continue to be cross-examination.

Mr. Gust: Yes.

Examiner Norwood: Yes, that is understood.

Mr. Gust: I mean to say it would be, in substance, the same as though I were examining her now. If I asked her questions now that were not proper cross-examination, then I would make her my witness, but I want to examine her later, the same as at this moment.

Examiner Norwood: Do counsel for the Commission agree that this witness may be recalled later for cross-examination?

Mr. Michael: Well, the question of fees enters into it; she comes from Battle Creek, and I don't know if we would be warranted having her come down here at a later date.

Examiner Norwood: I think so, but I think in that case she should be called at the expense of the respondent.

Mr. Gust: The respondent will be willing to pay the expenses and put the government to no further expense.

Mr. Hornibrook: I have no objection to cross-examining her at a later date, even though he makes her his own witness, but it is a question whether the government should pay the witness fees again.

Mr. Gust: Well, I have offered to pay the witness fees that might otherwise be chargeable to the government.

Mr. Michael: Mr. Examiner, do I, understand that thereby we will not waive our right to object to any questions that may be asked that we do not think constitute cross-examination.

Examiner Norwood: Certainly. Off the record, Mr. Reporter.

(Discussion outside the record.)

Mr. Hornibrook: My idea is, Mr. Examiner, that this line of cross-examination is improper and subject to very pertinent objection, and I think it is such that it is so out of the way that I don't think the Commission, in all reasonableness would be called upon to waive an objection. Consequently, it would seem that since it is apparently so objectionable that it would be incumbent upon the Examiner or the Commission, or anybody that has any authority in the case, to arrange for a continuance for this re-cross examination, which, on its face, is objectionable, and would be objected to.

Examiner Norwood: Well, for that reason I stated that I would decide the question when it comes up in the future, according to the circumstances that appear. Off the record.

(Discussion outside the record.)

Examiner Norwood: Do you wish to cross-examine this witness further at the present time?

Mr. Gust: I think I will reserve any further cross-examination under the arrangement we made.

Examiner Norwood: Do you wish any redirect now?

Mr. Hornibrook: We will offer this Respondent's Exhibit 11 for identification as Commission's Exhibit No. 7.

Examiner Norwood: Any objection?

Mr. Gust: No objection.

Examiner Norwood: Respondent's Exhibit 11 for identification is received as Commission's Exhibit No. 7.

(The paper referred to was marked Commission's Exhibit 7, and received in evidence.)

### Redirect Examination

By Mr. Hornibrook:

Q. Now, upon acknowledgment of some of your advertisements, as I understand it, a sample is sent to the one who has sent in for the sample?

A. Yes.

Q. And when that sample is sent out, what is sent with it?

A. A letter and a questionnaire, and an order blank.

Q. And when you receive an order for either of these remedies, obesity remedies, when you receive an order for the treatment, accompanying that order, is a questionnaire which has been filled out?

A. Yes.

Q. And to whom is that submitted?

A. Dr. Parker.

Q. What does the questionnaire contain?

A. Questions.

Mr. Gust: I think, if the court please, I will object to that. The questionnaire is the best evidence.

Examiner Norwood: I think that is right. Objection sustained.

By Mr. Hornibrook:

Q. Well, after the receipt of the filled-out questionnaire, what is then done?

A. The questionnaire is taken to Dr. Parker and then, upon her recommendation, the treatment is either sent, or a letter is sent and the order is held until we hear from the party again.



Q. And the person that has filled out the questionnaire and has ordered the treatment, knows nothing about the names of these medicines?

Mr. Gust: I object as to what the patient knows.

Mr. Hornibrook: Well, I can put it in a different way if you want to be unpleasant about it.

Mr. Gust: Well, I don't want to be unpleasant, but I just state my objection.

Examiner Norwood: Read the question, please, Mr. Reporter.

(Question read as above recorded.)

Examiner Norwood: Objection sustained.

Mr. Hornibrook: Just strike that, then.

By Mr. Hornibrook:

Q. Then, upon receipt of the questionnaire, you say that it is turned over to Dr. Parker?

A. It is.

Q. For what purpose?

A. Well, whether the treatment should be sent or which treatment should be sent.

Q. And who determines which treatment should be sent?

A. Dr. Parker.

Q. And she always determines whether any treatment should be sent?

A. She does.

Mr. Hornibrook: That's all.

### Recross Examination

By Mr. Gust.

Q. Do you receive any orders where you do not send either treatment?

A. We do.

Q. You receive some where you send neither of the treatments?

A. Yes, sometimes we hold it; sometimes we return it.

Q. Do I understand, then, correctly, that this advertisement simply says, "Kelloids," or some other language, and does not mention thyroid at all; is that right?

A. No, it does not mention it.

Q. It doesn't mention either the absence or presence of thyroid?

A. No, it does not.

• Mr. Gust: I have nothing further at this time.

### Redirect Examination

By Mr. Hornibrook:

Q. Isn't it a fact that when a thyroid preparation is prescribed by Dr. Parker, that Dr. Parker fixes the dosage in each particular case?

A. Well, the dosage is regular, unless something in that questionnaire would make her change it.

Q. She does vary the dosage often, does she not?

A. Well, as often as the occasion requires.

Q. Isn't it a fact that frequently Dr. Parker has denied treatment for obesity, either of the treatments for obesity, upon a study of the questionnaire and the money advanced has been returned?

A. She has denied it in the past; of course, there were a great many requests when we were doing a great deal of business, there were a great many that were denied.

Mr. Hornibrook: That is all.

Mr. Gust: That is all at this time.

Examiner Norwood: You are excused.

(The witness was excused.)

Mr. Hornibrook: We will call Dr. Frederic Fenger.

DR. FREDERIC FENGER, called as a witness for the Commission, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hornibrook:

Q. Give your name to the reporter, please.

A. Dr. Frederic Fenger.

Q. You are with Armour & Company?

A. Armour & Company, yes.

Q. Packers in Chicago.

A. Packers in Chicago, yes, sir.

Q. What position do you hold?

A. Chemist in charge of the glandular division.

Q. Armour & Company makes desiccated thyroid, do they?

A. They do; yes, sir.

Q. How much do they make?

A. Well, they make about 15,000 pounds of the powder a year, and about between 50 and 60 million tablets.

Q. Do you know what proportion that is of the whole output of the United States?

A. I do not; no, sir.

Q. Is that desiccated thyroid made under your supervision?

A. Yes, sir.

Q. To whom does Armour & Company sell its desiccated thyroid?

A. Chiefly to the drug trade.

Q. And by "drug trade" you mean wholesale and retail druggists?

A. Wholesale and retail druggists; yes, sir.

Q. In what form is it put up for sale?

A. It is put up in powder form, in bottles, and in tablet form, in units of 100, 500, and a thousand tablets.

Q. Do you know whether that is for sale to the laity by the druggist?

A. It is, yes, sir.

Q. Could you name some of your larger customers?

A. You mean drug houses?

Q. Yes.

A. Liggett's, I think, buy from us, and McKesson & Robbins, wholesalers.

Q. Where are they located?

A. They are located here in Chicago.

Q. They are wholesale druggists?

A. Yes, and Walgreen's.

Q. You sell thyroid throughout the United States?

A. Yes, sir, throughout the United States.

Q. To retailers and wholesalers of drugs?

A. To retailers and wholesalers of drugs; yes, sir.

Q. Do you sell Parke Davis, in Detroit, Michigan?

A. No, sir; not to my knowledge; I am quite sure.

Q. You would know, wouldn't you?

A. Yes, I would know.

Q. You would say they do not sell Parke Davis in Detroit?

A. Yes.

Q. Isn't it a fact that Parke Davis & Company make their own thyroid.

A. Yes, they do.

Q. Now, all the thyroid glands that are accumulated by butchers and small packers and large packers, is not put up as desiccated thyroid by those that do the packing and killing, is that the fact?

A. Yes, sir, we only put up our own.

Q. What becomes of that supply which is not put up by the packers themselves?

A. It is sold to the other large drug manufacturers like Parke Davis and Eli Lilly & Company, etc.

Q. Do you sell raw thyroid to anybody, or do you use it all yourself?

A. I am not certain about that. I think we use practically all of it ourselves.

Q. You do know, though, that you do not sell Parke Davis & Company?

A. Yes, I am sure we do not.

Q. Now, where does this desiccated thyroid come from?

A. It comes from the thyroid gland of animals used for food by man. We use chiefly the hog gland.

Q. Just go into that a little bit.

A. The gland is located in the neck near the windpipe, and it is dissected out and promptly chilled, so that the girls can trim it and remove extraneous connective tissue, fatty tissue, and things like that. Then they are finely minced and dried in a vacuum, and after they are dried, they are defatted with petroleum, ether or other suitable solvent, and then they are powdered. Then the powder is standardized as to iodine content, and blended, so that it contains two-tenths of one percent of iodine. The pharmacopoeia allows a limit of from 1,700 to 2,300. After proper assay, the powder is ready for sale in powder form or made into tablets.

Q. Do you know whether there is any difference in the strength of thyroid produced by Parke Davis & Company and Armour & Company?

A. Yes, sir.

Q. What is it?



A. Parke Davis' thyroid contains three-tenths of one per cent of iodine.

Q. And what is yours?

A. Two-tenths of one per cent, which is the U. S. P. specification.

Q. Does Armour & Company advertise this thyroid in any way?

A. We do in the Medical Journals occasionally.

Q. Do you advertise it as safe and harmless?

A. We advertise the thyroid U. S. P. and state that it is standardized and assayed.

Q. You do not advertise to the general public?

A. No, sir.

Q. Who is your largest competitor in the sale of thyroid?

Mr. Gust: I object to that. The witness has not stated he had any competitors?

Examiner Norwood: I think he should be qualified.

Mr. Hornibrook: I will qualify him.

By Mr. Hornibrook:

Q. Do you have competitors in the sale of thyroid?

A. Yes, sir.

Q. Who do you consider is your largest competitor?

A. Parke Davis & Company.

Q. Do you know of your own knowledge of any drug manufacturing house that puts up a thyroid remedy for obesity?

A. No, I couldn't name them by name.

Q. How about Harold Laboratories, of Glendale, California?

A. I know they had a laboratory, but I didn't know they had an obesity cure.

Q. Do you know that they sell one?

A. No, I do not.

Q. How about the tablets and powders, thyroid tablets and powders, manufactured by Armour & Company. Are they a pure product made from the thyroid gland?

A. Yes, sir.

Q. There is no other ingredient put in?

A. Well, in the standardizing of it for U. S. P. strength, we have to sometimes lower the potency. A lot of the glands are low in iodine content, in the iodine content that the U. S. P. specifies, and we blend it.

Q. But all of your output is made to conform to U.S.P. specification?

A. Yes, sir.

Mr. Hornibrook: I think that is all.

Examiner Norwood: Cross-examine.

### Cross-Examination

By Mr. Gust:

Q. You standardize at two-tenths of one per cent of iodine content?

A. Yes.

Q. And the U. S. P. regulation is from 1,700 to 2,300?

A. That's right.

Q. Two-tenths of one per cent is your standard?

A. Yes.

Q. Now, you sell it in both the powder and the tablet form, do you not?

A. Yes.

Q. Do you sell any manufacturing chemist and drug trade?

A. Yes, we sell a few manufacturing chemists.

Q. I see. In what form is the powder put up that goes to the drug trade?

A. It is put up in one-ounce, eight-ounce, and one-pound packages.

Q. Packages?

A. Yes.

Q. Now, your tablets are put up, you say, in bottles from 100 to 500?

A. 100, 500 and a thousand.

Q. And what size tablets do you put up?

A. Five-grain, two-grain, one-grain, one-half-grain, one-quartergrain and one-tenth-grain.

Q. You go from one-tenth to five grains?

A. Yes, sir.

Q. Now, you say that you have advertised it to physicians in the Medical Journal, is that right?

A. That's right.

Q. But you have never advertised it to the general public?

A. No, sir.

Q. Your advertisement in the Medical Journal simply calls attention to the fact that you sold thyroid, desiccated thyroid, with a certain iodine content, is that it?

A. It emphasizes our carrying and standardizing product?

Q. But your customers are the druggists who put it up on physicians' prescriptions, is that it?

A. That's right.

Q. And you have never advertised it as a therapeutic agent for any disease of any sort, have you?

A. No.

Q. Either obesity, or anything else?

A. No, sir.

Q. Do you have a sample of one of your bottles with you?

A. I have not; I am sorry. It slipped my mind.

Q. You do not have a label, either?

A. No, but I can tell you what is on the label.

Q. Now, you say that Parke Davis, you regard it as your largest competitor, do you?

A. Yes, to the best of my knowledge.

Q. They put up thyroid tablets which they also advertise in medical journals, don't they?

A. Yes, sir.

Q. To physicians?

A. Yes.

Q. Did you ever regard the Raladam Company as a competitor of yours?

A. Who?

Q. The Raladam Company?

A. No, I never heard of them.

Q. You never heard of them?

A. No.

Q. You do not regard them as one of your competitors, do you, not having heard of them?

Mr. Hornibrook: He said not.

Mr. Gust: He said he did not regard them; all right.

Mr. Hornibrook: He said he never heard of them. How could he reach a conclusion?

By Mr. Gust:

Q. You do not regard yourself in competition with any proprietary medicine dispensers, do you; you are not in that business, are you?

A. No.

Mr. Hornibrook: I object to the question. That is a conclusion to be drawn by the Commission from the facts involved.

Mr. Gust: It is a conclusion that perhaps this gentleman can throw some light on, if the court please.

Examiner Norwood: I think, inasmuch as he testified to having competitors, that counsel may test his understanding of the term, what he knows about the competition which his firm has.

By Examiner Norwood:

Q. Are you directly connected with the selling end of this business?

A. No, I am not.

Q. Do you know who all those competitors are, of your company, or any of them?

A. Yes. Well, we get samples from what I consider our main competitors, occasionally, and analyze and assay the products, to see how they compare with ours.

Q. But your business is such that you would know about all the competitors or not?

A. No, I wouldn't know the details?

Examiner Norwood: I see.

By Mr. Gust:

Q. Well, Doctor, you do know that you are not in the business of selling patent or proprietary medicines, don't you?

A. Yes, we do not sell them.

Q. And you do not regard yourself as being in competition with the people who do sell proprietary medicines?

Mr. Hornibrook: I object to the question on the basis of his previous answers.

Examiner Norwood: Yes, in view of the facts that he has testified to, I think it is a conclusion and it is a conclusion that would be drawn from a very meager basis. Objection sustained.

Mr. Gust: Well, I take it that that goes to all questions along that line. Well, I will withdraw that.

By Mr. Gust:



Q. Do you regard yourself in competition with this lady that testified in your presence this afternoon?

Mr. Hornibrook: I object to the question.

Examiner Norwood: He can state whether or not he knows that he is in competition with them, or whether he does not know; but I will sustain an objection to the question in its present form.

By Mr. Gust:

Q. Are you, as far as you know, in competition with the Kellogg Rational Treatment Company, or F. J. Kellogg Company, of Battle Creek?

A. I never heard of them until today.

Q. Do you make any other pharmaceutical preparations?

A. Yes, sir.

Q. Do you advertise any of them to the general public?

A. No, sir.

Q. Have you ever advertised any of them to the general public?

A. No, sir.

Q. Are you in competition with the Raladam Company?

Mr. Hornibrook: I object to the question. It has already been asked.

Examiner Norwood: He is asking him if he knows that; he is asking for his positive knowledge. He can ask it again if he wants to.

Mr. Hornibrook: I object, for the further reason that the witness testified he is not connected with the sales end of the business, and consequently, he would not have the knowledge to base an answer upon.

Examiner Norwood: He can tell any competition that he knows about, whether he is sales manager or not. He can

tell it. Objection overruled. Will you read the question, please.

.(Question read as above recorded.)

The Witness: A. No, not to my knowledge.

Mr. Gust: I think that is all.

### Redirect Examination

By Mr. Hornibrook:

Q. Doctor, is a firm which sells 450,000 packages of medicine a year, each package containing 36 tablets, each of which contains two grains of thyroid, and sold for medicinal purposes, one of which is the treatment of obesity, in competition with Armour & Company in the sale of thyroid?

Mr. Gust: I object, if the court please.

Examiner Norwood: Objection sustained. That is the ultimate conclusion for the Commission from the facts that he has recited.

By Mr. Hornibrook:

Q. Doctor, when you made your previous answer to the question as to whether you knew whether the Raladam Company was in competition with Armour & Company, did you know at that time that this firm sells annually 450,000 packages of medicine a year, each containing 36 tablets, each of which contains two grains of thyroid?

Mr. Gust: I object to it as not being a proper recitation of the facts.

Examiner Norwood: Will you read the question, please, Mr. Reporter?

(Question read as above recorded.)

Examiner Norwood: What is wrong with that?

Mr. Gust: Well, it is not two grains; it is only a half grain.

Mr. Hornibrook: Well, change it to a half grain.

Examiner Norwood: All right.

Mr. Gust: I object to it for the further reason as being wholly immaterial. The witness already said he never heard of Raladam.

Mr. Hornibrook: It is a preliminary question, so that he can be asked that if he did know, would his answer be the same.

Examiner Norwood: I think he can answer whether or not he had this knowledge and considered it in his previous question. Objection overruled.

Mr. Hornibrook: Will you read the question, please? (Question read as above recorded.)

By Mr. Hornibrook:

Q. Did you know that?

A. I didn't know the name of the Raladam Company. I have heard of the Marmola tablets, but I did not know that they were made by the Raladam Company.

Q. Well, did you know that that was the extent of the business of the Raladam Company?

A. No, I did not.

Q. You did not know that the Raladam Company made the Marmola tablets?

A. No, sir, I did not.

Q. Assuming now that the Raladam Company sells 450 000 packages of medicine a year, each containing 36 tablets, each of which contains a half grain of thyroid would you say that the Raladam Company is in competition with Armour & Company in the sale of thyroid?

Mr. Gust: I object.

Examiner Norwood: Objection sustained. He can't tell if he knows these facts. He can swear to competition, as a matter of fact, if it is within his knowledge. The Supreme Court has said that competition is a matter of fact to be

disclosed by observation and not arrived at by the processes of logic.

By Mr. Hornibrook:

Q. Well, do you know whether Marmola is in competition with Armour & Company in the sale of thyroid products?

A. Yes, I know that Marmola tablets contain thyroid; yes, sir.

Q. Do you know that they are in competition with Armour & Company?

Mr. Gust: I object to that. He already said they were not.

Mr. Hornibrook: He said the Raladam Company. He said he did not know that they made Marmola.

Examiner Norwood: Read the question, please.

(Question read as above recorded.)

Examiner Norwood: Answer that if you have any direct knowledge of this business and know whether or not the Raladam Company is in competition with your company, if it comes in your line of work to know that and you have observed that.

The Witness: Yes, sir, any manufacturer who sells thyroid is in competition.

Mr. Gust: I move to strike that out as being obviously a conclusion of the witness.

Examiner Norwood: Motion granted. Off the record, Mr. Reporter.

(Discussion outside the record.)

Mr. Michael: I would like to call the attention of the Examiner to the fact that the respondent over objection was allowed to ask this witness whether in his opinion Armour & Company was in competition with the Raladam Company.

Mr. Gust: I take exception to that remark.

Examiner Norwood: I don't remember it that way.

Mr. Gust: The Examiner did not allow me to do that.

Mr. Michael: But he was allowed to ask the same thing in effect, when he asked the witness if the witness knew whether they were in competition, and the witness said that he did not.

Examiner Norwood: Yes.

Mr. Michael: He is in effect stating that he did not know that they were in competition. Now, he has since admitted that he did not know that the Raladam Company made Marmola.

Examiner Norwood: Yes.

Mr. Michael: Now, to clarify the question, he has already been asked on cross-examination, and it is proper to ask whether the product, Marmola, from his observation, having in it thyroid, is in competition with thyroid, as put up by Armour & Company.

Examiner Norwood: And he answered that anyone who sells thyroid is in competition with Armour.

Mr. Michael: But that was stricken. If that would remain.

Examiner Norwood: Well, I consider that a generalization.

By Examiner Norwood:

Q. Did you answer that from your own knowledge?

Mr. Hornibrook: He answered it from a hypothetical question.

Examiner Norwood: I don't think he is an expert on competition.

Mr. Michael: I don't think so either. I don't think he ought to be allowed to answer the other question, but since he was, I think he ought to be allowed to answer, since he knows Marmola.

Examiner Norwood: I think it is all clear in the record. Any further questions



Mr. Hornibrook: That is all.

Mr. Gust: That is all.

(The witness was excused)

Examiner Norwood: Any further witnesses?

Mr. Michael: We will recall Mr. Hayes for further direct examination.

Examiner Norwood: Mr. Edward D. Hayes is recalled for the complainant.

Edward D. Hayes, recalled as a witness for the Commission, having been previously duly sworn, testified further as follows:

Direct Examination (Cont'd)

By Mr. Michael:

Q. Just state generally, Mr. Hayes, in what class of newspaper, now, generally, your advertising is usually inserted.

A. All over the United States, in every state in the Union, it is advertised in what we call the best advertising daily mediums.

Q. Now, in what magazines?

A. We are not in any magazines at all.

Q. None at all?

A. None at all.

Q. You are in the magazine sections of newspapers, are you not?

A. No, sir,—let's see—not now, we are not.

Q. But you have been?

A. We have been.

Q. Take Commission's Exhibit 4-E, for instance. Is that a magazine?

A. That is a magazine. We were in the magazines then, but not now, and we haven't been for a year or more.

Q. But you formerly did?

A. Yes.

Q. What magazines, for instance, did you advertise in formerly? Can you name any of them?

A. Well, all the news stand group, and I think Facetts, or Facets group of magazines, and some of the moving picture magazines, but we haven't been running in them for a number of years.

Q. All those magazines were of general circulation throughout the United States?

A. Yes, they were.

Q. And many of the newspapers are of general circulation throughout the country, in which you advertise?

A. Yes.

Q. Now, Mr. Hayes, do you think these exhibits which you identified, which were numbered Series 3, 4, 5 and 6, by sub-letters, does that comprise substantially your entire advertising copy for newspapers and magazines during the period about which you testified?

A. Substantially so; they are not all there.

Q. Now, would you explain what are not here, generally, and why?

A. I can tell you why: because we have shifted into, I think, four different advertising agencies, and the copies were destroyed, the electrotypes were destroyed, and we are not in possession of them.

Q. Those that are not here were entirely different ads from these that are here?

A. Well, substantially the same; there wasn't any material difference.

Q. Different lead lines and different pictures, and things of that kind?

A. Yes, that's all.

Q. Some of the body may have been repetition of what is here?

A. Yes, sir.

Q. Now, about your radio continuity, did you bring any of that with you?

A. Yes, sir.

Q. How generally have you advertised over the radio since April 27, 1929?

A. Well, we have used, I think as high as between thirty and thirty-five stations.

Q. When did you begin radio advertising?

A. Oh, a number of years ago. We never advertised on the radio steady; it was just now and then.

Q. Do you do it regularly now?

A. No, we do not.

Q. But at the present time, you have contracts with thirty-five radio stations?

A. No, not at all; not with any radio stations.

Q. How long since you advertised over the radio?

A. I think it is last April or May. There might have been a few stations in June.

Q. Why did you quit?

A. The stations would not run them.

Q. In other words, you are in a position of still desiring to use that media?

A. Yes.

Q. But are unable to get the time?

A. We would be able to get the time if your Commission would let us alone and let the stations alone.

Q. Is it our Commission or the Federal Communications Commission?

A. Well, you went to the Federal Communications Commission and interested them in intimidating the radio stations not to run our broadcasts; at least, that is what they say; that is what the radio stations tell us.

Q. Isn't it a matter of fact, Mr. Hayes, that the Fed-

eral Communications Commission had hearings on your advertising, prior to the time that this complaint was issued?

A. Prior to the time this complaint was issued? I don't think so, but I am not sure.

Q. And that that matter was gone into long before this complaint was issued?

A. I don't think so. I didn't go into it with them at all.

Q. Well, you know about a hearing down at Washington before the Federal Communications Commission?

A. I heard about it.

Q. That the radio companies had?

A. It was in October, wasn't it?

Q. Well, if you knew about it, you knew when it was.

A. Yes.

Q. And that the investigation that led to those hearings, was had long before this complaint was issued.

A. Not that I know of. It may have been.

Q. You don't know whether this complaint was the outgrowth or had some connection with those hearings, do you?

A. It may have; I don't know.

Q. And you have no knowledge that the Federal Trade Commission had anything to do with those hearings?

A. Only from what the radio stations told me.

Q. You do not have any knowledge of that kind, do you?

A. No.

Q. Now, was your continuity on these various stations all the same?

A. No, they were different; there was a series of them, what they call one-minute announcements, or a dramatized one-minute announcement. Your Commis-

sion was furnished with all the records of those announcements.

Q. Now referring to these copies of continuities that you handed me, I will ask you to examine them, and they will be designated as Commission's Exhibits 8-A, 8-B, 8-C, 8-D, 8-E, 8-F, 8-G, 8-H, 8-I, 8-J, and 8-K, and I will ask you to state if those represent copies of the continuity used by radio stations in broadcasting advertisements of your company, of your product, Marmola?

A. I believe them to be.

Q. Did those represent all the programs that were used in advertising Marmola?

A. Well, not in the last six years, but in the last year.

Q. In the last year?

A. Yes.

Q. And no others that you know of, were used during the last year?

A. No, I don't know of any.

Mr. Michael: Mr. Examiner, I offer in evidence these copies of continuities.

Examiner Norwood: They are received as marked, Commission's Exhibits 8-A to 8-K.

(The papers referred to were marked Commission's Exhibits 8-A to 8-K, both inclusive, and received in evidence.)

By Mr. Michael:

Q. Mr. Hayes, did you have available the continuities that were used prior to this year?

A. I think they were all destroyed. They were on records, and those records were sent out to stations.

Q. Weren't typewritten or mimeographed copies of the continuities retained by anyone?

A. They might have been.



Q. Do you have them?

A. I don't think so.

Q. Does your advertising agency or your representative that arranges for your broadcasts have them?

A. They may.

Q. Who would have copies of continuities used prior to this year?

A. Critchfield and Company.

Q. Where are they located?

A. They were located here in Chicago.

Q. Do you know the address?

A. No I have forgotten. You can find it in the telephone book.

Q. Could your counsel get from them, copies of that previous continuity?

A. If they have them. That goes back.

Q. Are you willing to request him to do that?

A. Yes.

Mr. Michael: Is that all right, Mr. Gust?

Mr. Gust: Yes, I will get them if Critchfield has them.

The Witness: You have them in Washington, haven't you?

Mr. Michael: Well, they might be with the special board that handles continuities, but I don't know.

(Discussion off the record.)

By Mr. Michael:

Q. Did Critchfield & Company handle all the accounts that you had, of this kind, prior to this year?

A. No, Ruth, Roth & Ryan and Kastor & Sons, H. W. Kastor & Sons Advertising Company; they placed the business from January 1, 1934, to October 1, 1935.

Q. Where are they located?

A. Right here in Chicago.

Q. Where is this other firm located?

A. Ruth, Roth & Ryan are located in New York, and they have an office here in Chicago, and they have one in Detroit, but I cannot recall whether we did any broadcasting with them at all, or not. I doubt it, very much.

Q. But you did with this other concern?

A. We did with Kastor.

Q. You say that you or somebody furnished copies of continuities to the Federal Trade Commission, or some division of it. Was all the continuity furnished that these various firms used?

A. That is my understanding.

Q. Do you know to what division of the Commission it was sent?

A. No, I do not.

Q. Do you know who furnished it?

A. Well, the people who made the records. There is a World Broadcasting Company that made records, and they say they sent all of them to the Federal Trade Commission and the radio stations; not all of them that I talked with, but those that I have talked with told me the same thing.

Q. Do you recall furnishing some continuity to Mr. Montgomery, an Examiner for the Commission at one time?

Mr. Gust: I furnished that.

Mr. Michael: Yes, you did.

Mr. Gust: I did not recall whether he asked for a continuity or whether we gave it to him.

Mr. Michael: I think you did. Do you recall whether that was duplicates of these, or whether they were prior continuities?

Mr. Gust: I don't think I gave them, so I cannot recall what it was. I am quite sure I did not; I am sure he did not ask for it.

Mr. Michael: Well, we will look it up tomorrow, and if you can locate some, I wish you would furnish it to your attorney, so that we can agree to put it in the record later, and not recall you.

The Witness: Yes.

By Mr. Michael:

Q. Mr. Hayes, do you know of other individuals, firms or corporations that sell treatments or paraphernalia, or anything, for the treatment of obesity?

A. Why, I have seen several advertisements of different concerns, but they do not appear to be in existence to-day, or now.

Q. Do you know of such concerns?

A. No.

Q. Without seeing the ads.

A. I could not mention any.

Q. You could not mention any?

A. No, except, if you would call Kruschen Salts and Jad Salts a treatment for obesity.

Q. Have you seen their ads?

A. Yes; I never regarded them as competitors of ours.

Q. Did you ever hear of reducing belts being on sale?

A. I think I have seen advertisements of reducing—I don't think they call them belts, do they—something to hold in women's forms, like a corset.

Q. Those are elastic belts you are thinking about.

A. Yes.

Q. Did you ever hear of reducing belts that are operated by machines to bring about massaging of the body?

A. Yes.

Q. And you have seen those on sale, haven't you?

A. No.

Q. But you have heard of them?

A. Yes.

Q. And know of them being used for reducing purposes?

A. I suppose they were; they were advertised for that.

Q. You have heard of rowing machines sold generally for reducing and exercising purposes?

A. I know they were sold for exercising purposes.

Q. An exercising purpose is a reducing purpose, isn't it?

A. Not altogether.

Q. It may be.

A. Yes.

Q. And those machines are used for reducing purposes, aren't they?

A. They may be.

Q. And any paraphernalia used for exercises may be used for reducing purposes?

A. It may be; I don't know; I am not an expert.

Q. You know those things are on sale generally, don't you?

A. Yes.

Q. And you know of books on reducing diets that are on sale, don't you?

A. No, I never saw one of them.

Q. You never saw one?

A. No.

Q. Did you ever see the Hollywood Diet Book?

A. No.

Q. Did you ever see Dr. Lulu Hunt Peters' book on reducing diet?

A. No, sir.

Q. Did you ever know of it?

A. No, sir.

Q. Or either of them?

A. I never paid any attention to those things. I don't

mingle with them. I tend strictly to the Marmola business. What somebody else is doing does not concern me at all, and I never considered them competitors of Marmola.

Q. But you did know of Kruschen and Jan Salts being advertised for obesity?

A. Yes, but they were not a treatment for obesity, and your Commission has shown that.

Q. Well, you said you had seen the ads.

A. Yes.

Q. Did you ever see any ads of Welch's grape juice, as a food to be taken for food while a person was on a reducing diet?

A. I have seen the grape juice copy, or seen some of it, where it says, "Take grape juice to reduce," or "Reduce."

Q. Yes.

A. I have seen that.

Q. And you know that is on general sale?

A. Well, I believe it to be, but I don't think Marmola is a competitor of grape juice. I think that is a joke.

Q. Did you ever hear of the various thyroid preparations being on sale at drug stores?

A. Whose?

Q. Various thyroid preparations, - pharmaceutical preparations being on sale in drug stores?

A. No.

Q. You did not know they were on sale in drug stores?

A. I knew thyroid tablets were on sale.

Q. That is what I mean: you know of that?

A. I know of thyroid tablets.

Q. Whose thyroid tablets or pharmaceutical preparations are you familiar with being on sale generally?

A. Parke Davis & Company.



Q. Who else?

A. Armour & Company.

Q. Anybody else?

A. I just don't recall any.

Q. Do you know Burroughs-Welcome Thyroid?

A. I don't know anything about them; I never saw them.

Q. How did you know of those pharmaceutical preparations being on sale?

A. How do I happen to know?

Q. Yes.

A. Because I went in the drug stores to find out.

Q. Did you find them on sale?

A. Yes.

Q. Did you buy any?

A. Yes, I bought them at the first hearing we had here, I brought them in here as exhibits.

Q. You bought them yourself?

A. We bought them right downstairs; that is, when we were over in the other place, where the first hearing was held, and we got Armour & Company, and I think one or two others, I don't just recall, and brought them in to show that thyroid was for sale in drug stores and anybody could go in and buy it.

Q. And you bought them at the drug store?

A. Yes.

Q. Without a prescription?

A. Yes, sir.

Mr. Michael: I believe that is all. Off the record for a moment.

(Discussion outside the record.)

Mr. Michael: Mr. Examiner, our position is this: that a study of the record might disclose that there might be questions in addition, that we would like to ask Mr. Hayes,

and subsequent testimony might develop things from which it would be necessary to recall him. But so far as we know right at this moment, we are through with him, but we would like to have the record show that we want to reserve the right to recall him, if necessary.

Now, if counsel for respondent understands that position, perhaps he would like to finish with the witness now, so that if we do not recall him, he is through.

Examiner Norwood: The witness can be recalled even after the conclusion of the redirect, at any time, by either party.

Mr. Gust: May we have a few minutes' recess?

Examiner Norwood: Yes, we will take a short recess. (Whereupon, a short recess was taken.)

Examiner Norwood: Come to order, gentlemen.

#### Cross-examination

By Mr. Gust:

Q. Mr. Hayes, this morning you were read a statement which at one time appeared in your booklet, commencing, "We feel a responsibility to those who buy Marmola, and we wish them to know all the facts at their command." Do you recall that statement?

A. Yes.

Q. You were asked this morning as to when that statement appeared in the booklet. Have you since endeavored to make an investigation to find out when that statement appeared?

A. I did; this noon.

Q. Yes; and did you go back as far as the 1929 booklet?

A. I did.

Q. Did it appear in any of the booklets in use since 1929?

A. It did not.

Q. So that that statment appeared in the booklet used prior to 1929?

A. Well, that is what I believe to be true.

Q. That is what you now believe to be true?

A. Yes.

Q. On examining the booklet that we have.

A. Yes.

Q. That statement was written by Mr. Hopkins, wasn't it?

A. I believe it was.

Q. And he was one of the advertising agents?

A. He was a copy writer; he wrote all the copy.

Q. I see. He was writing copy prior to 1929?

A. Oh, yes.

Q. Now, Mr. Hayes, you were interrogated about the method of the Raladam Company doing business, and the fact that the Raladam Company had never done any so-called mail order business. That's right, isn't it?

A. That is right.

Q. The Raladam Company has never done a mail order business?

A. None whatever.

Q. They have always sold their product to the drug trade?

A. Yes, sir.

Q. Now, you have had experience in selling by the mail order method, haven't you?

A. I, personally, have.

Q. And you get a lot of letters through the mails that way from various buyers and prospective buyers, do you not?

A. Yes, sir.

Q. And it is necessary that they be answered, I take it?

A. Yes, sir.

Q. And in a business the size of the Marmola business, you have to employ a staff of clerks to do that don't you?

A. Yes, sir.

Q. You never engaged in the business of answering, yourself, personally, did you?

A. No, sir.

Q. Did you find that it was very difficult to get employees who could properly answer questions that would be put to the company, through the mails?

A. I found that it was quite impossible.

Q. And some questions were asked you by the Post Office Department; was it because of the answers of these employees through the mails, to questions, that the Post Office Department cited you or your company?

A. It was.

Q. Was it to avoid a possible repetition of that, among other things, that the Raladam Company never used that method of doing business?

A. That was the primary reason.

Q. Now, these letters that were the subject-matter of this Post Office investigation, were they written by you, personally?

A. No, sir.

Q. Were they written by some employees, clerks, that you hired?

A. They were.

Q. And that was the prime reason why you did not want to go on with that kind of a method of distribution, wasn't it?

A. Yes, sir.

Q. Now, I think you said, Mr. Hayes, that Commission's Exhibit 1-A, etc., was the package that was used up until 1933, is that right?

A. Yes, sir.

Q. It was first adopted as a style of package of 1922, is that right?

A. Yes, sir.

Q. And there was no change in the style of the package until you adopted your present style in 1933?

A. No, sir.

Q. But during that time there was some changes and revisions in the booklet that went in the inside?

A. There was.

Q. And it was some time during that period, at least after 1927 and before 1929, that this language which commences "We feel a responsibility" was put in the booklet, is that right?

A. I believe so.

Q. You believe so?

A. Yes.

Mr. Gust: I think that is all.

Mr. Michael: Did you succeed in finding one of the booklets that had that sentence in it?

Mr. Gust: I will say this to you, Mr. Michael: I have the booklets that go back as far as 1928, the one used in 1928, 1929, adopted some time late in 1928, and it is not in there, and the one used from 1929 to 1932, is not there. If you want these in the record, you can have the witness identify them.

Mr. Michael: Are they different?

Mr. Gust: They are not any different, so far as I have been able to see.

Mr. Michael: From these that are here?

Mr. Gust: From what you have here. There may be a slight difference, but I don't want to encumber the record with them, unless it is necessary.



Mr. Michael: We will take your word on the wording of them.

Mr. Gust: I will assure you that the statement which you cited—

Mr. Michael: I mean, a different wording that would make it advisable to make a complete showing of the wording used in that booklet.

Mr. Gust: I haven't been able to see any such difference. I will keep them, and they will be available for you any time you want to examine them.

Mr. Michael: Do you think you can find one of the booklets that had this quotation in?

Mr. Gust: I will make an effort.

Mr. Michael: All right.

#### Redirect Examination

By Mr. Michael:

Q. Mr. Hayes, in the practically thirty years since you have been selling Marmola, having therein desiccated thyroid, you have advertised extensively to the public that this is a thyroid preparation.

Q. Since 1925, I think.

Q. Since 1925?

A. Yes, I think that is when we began. When Mr. Hopkins started writing our advertising copy and writing the printed matter in the booklet.

Q. Yes.

A. He asked me what was the greatest sales resistance in the sale of Marmola, and I told him that I thought that the public would possibly be afraid to take an internal treatment for obesity, and he said, in order to overcome that, we will just publish the formula and tell them all about it.

Q. Had you ever before that mentioned thyroid in any way, in your advertising?

A. No, sir, I don't believe so.

Q. Or on your package, or in any way?

A. No.

Q. Had you informed the customers that this preparation had thyroid in it, prior to that time?

A. I don't believe so.

Q. Since that time, you have let it extensively be known that this was a thyroid preparation?

A. Well, so far as that copy is concerned, and in the booklets, yes, the advertising copy, and what it said in the booklet, to that extent we have.

Q. Have you found from your contact with the public and your customers, that it is a matter of general knowledge among the people, that thyroid when taken internally, is a reducing agency?

A. Is a reducing agency?

Q. I say, you have found that that is a matter of general knowledge that people know that?

A. I didn't say so.

Q. Haven't they learned it from your advertising?

A. Some people have.

Q. Haven't you found that people generally know that?

A. Not generally, no. I meet people continuously and they ask me about my product, and I find they don't know anything about it.

Q. But you have found people who did know?

A. Yes.

Q. And you did your best to inform the public that desiccated thyroid is a reducing agency?

A. I did not do the utmost.

Q. Well, I didn't say the utmost. You have done a good deal to educate the public in that regard, haven't you?

A. I don't think we did, and I don't think you have here any piece of advertising copy that even mentions thyroid.

Q. Well, you publish your formula.

A. That is in the package.

Q. Do you discuss it in your booklet?

A. I don't think so. I don't think it even says so there. It refers to glands; just glands.

Q. Well, thyroid is a gland, isn't it?

A. Yes.

Q. There is not the name of any other gland in your formula, is there?

A. No.

Q. So that is the only conclusion the public could draw, would be that this is a thyroid gland preparation?

A. I don't know whether they draw that conclusion or not. It is very difficult to say. If you would ask me whether the public, a great share of the public, believe or think and believe that Marmola tablets contain the heads of tape worms, I would say yes.

Examiner Norwood: I would not let you answer that.  
By Mr. Michael:

Q. Now, Mr. Hayes, when your continuity says that the very element that physicians everywhere prescribe for fat reducing, is the principal element of Marmola, you are referring to desiccated thyroid, aren't you.

A. Yes, sir.

Q. And when you use that publicity, you know that the people generally know what you are referring to, don't you?

A. I don't think they do, generally. I think there is a very small percentage of them that know.

Mr. Michael: That is all.

Mr. Gust: That is all.

(The witness was excused.)

Mr. Hornibrook: There are no witnesses subpoenaed for tomorrow forenoon. We expected this witness here to take up all the time. Tomorrow afternoon there will be two experts here, and the following day there will be two lay witnesses and a physician.

Examiner Norwood: The following day, they will be here in the morning.

Mr. Hornibrook: No, the two lay witnesses will be here in the morning, and the physician will be here at 2 o'clock.

Examiner Norwood: That is the day after tomorrow.

Mr. Hornibrook: Yes.

Examiner Norwood: Very well, then the hearing is adjourned, to reconvene at 2 o'clock tomorrow afternoon.

(Whereupon, at 4:30 o'clock, p. m. the hearing was adjourned to 2 o'clock, p. m., January 7, 1935.)

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## PROCEEDINGS

(Continued Jan. 7, 1936)

Examiner Norwood: The hearing will come to order.

Pursuant to adjournment of yesterday, the hearing in this case is now reconvened at 2 o'clock, p. m., at Room 1123, New Post Office Building.

EDWARD D. HAYES, recalled as a witness for the Commission, having been previously duly sworn, testified as follows:

## Direct Examination.

By Mr. Gust:

Q. Mr. Hayes, will you tell us approximately how many packages of Marmola have been sold since it was first put on the market?

A. Between twenty and twenty-one million packages.

Mr. Gust: That is all.

Mr. Michael: That is all.

(The witness was excused.)

DR. SAMUEL SOSKIN, called as a witness for the Commission, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Michael:

Q. You are Dr. Samuel Soskin?

A. Yes.

Q. Dr. Soskin, what is your business or profession?

A. I am Director of Metabolic and Endocrinologic Research, Michael Reese Hospital; Assistant Professor of Physiology, University of Chicago.

Q. Where is the Michael Reese Hospital located?

A. In Chicago.

Q. Is that a private or public institution?

A. It is a private institution with an endowed research institute.

Q. How long have you been connected with the Michael Reese Hospital?

A. Since 1929.

Q. In the same capacity?

A. Yes.

Q. How long have you had the connection with the University of Chicago that you just referred to?



A. Since 1932.

Q. Dr. Soskin, I wish you would state briefly and concisely your educational background and experience that has qualified you for the positions you hold.

A. I am a medical graduate of the University of Toronto; and following my receipt of my M. D. degree, I worked with Professor J. J. R. McCloud, shortly after insulin was discovered, and at the end of my period of work with him, received a Doctor of Philosophy degree in the subject of physiology. At the time I was there, I devoted myself entirely to research and teaching, and had the facilities of the Toronto General Hospital for work and research on patients.

Following my obtaining of a position at the Michael Reese Hospital, as Director of Metabolic and Endocrinologic Research, I came to Chicago after a trip around the country to see what was going on in other research laboratories, and have since directed the Department here.

In addition, I have given a course of lectures to the University of Chicago medical students since 1932.

In the summer of 1932, I also worked with Sir Henry Dale, of the National Institute Medical Research, London, England.

I should add one thing to that. I am also in charge of the Outpatient Dispensary, and Metabolism and Endocrinology, at the Michael Reese Hospital.

Q. Now, will you just explain briefly and concisely, so that the laymen may understand the nature of the research work that you do in your position at the Michael Reese Hospital?

A. My research work is concerned with metabolism and endocrinology.

As regards metabolism, metabolism in general is a subject which deals with the use of the food materials in the

creation of energy for the body, and sustenance of the tissues. It deals with these in terms of physics and chemistry, and utilizes also the methods of pathology and physiology in the study of food supply to the tissues, if necessary.

As regards endocrinology, this subject deals in a broad way with the effect of the so-called ductless glands on bodily functions, and one of the important effects of many of the ductless glands, including the thyroid, is to regulate the rate and the type of metabolism of the body tissues.

My work concerns both animals and human beings.

Q. Now, in connection with your study and your work, Dr. Soskin, have you had occasion to administer, observe the effect and study the question of the use of thyroid extract or desiccated thyroid on the human body?

A. Yes.

Q. Has your study and experience given you a knowledge of that subject?

A. I believe so.

Q. Has that study and experience in that particular line been extensive on your part?

A. Yes.

Q. In your opinion, is thyroid extract or desiccated thyroid such a medicine, or drug, or preparation, as you may term it, as may be taken with safety by a person who is attempting self-medication?

A. Decidedly not.

Q. Why?

A. Because the taking of thyroid for any purpose requires close supervision on the part of the physician who is competent to see the effect of the thyroid as the case is being treated.

Q. May thyroid when taken internally have a deleterious effect upon the human body?

A. Yes.

Q. I wish, Doctor, you would elaborate on that, and state what deleterious effects may result from the taking of desiccated thyroid.

A. Thyroid is a stimulant of the oxidative functions of the body, and, therefore, affects practically every tissue in the body. Therefore, the appearance of its effects naturally will show up in the weakest tissues, those which have undergone any organic change, and therefore, the changes most frequently seen, that is the signs most frequently seen are, first of all in the central nervous system. It may, for instance, throw a person who was formerly in mental balance into mental unbalance, because it increases the work of the heart and at the same time makes it less efficient. It may make a difference between a heart which, though damaged, is sufficient to maintain life in an individual, to one which goes into acute failure and will not support the life of the individual; because it increases the work of the kidneys, although its effect may not be seen in a perfectly normal kidney, when there is any indication, where the kidneys are working at the limit of their endurance, it may make the difference between ability to carry on functions of life, and inability, and, therefore, cause some kidney disease. It may show itself in many other ways; and as when the damage is severe, you may actually see changes in the tissues themselves.

However, usually, the first signs are on the weakened tissues and are shown physiologically. In other words, you may not be able to see it with the microscope, but observing the patient during life, one can readily demonstrate that these functions are inadequate.

Q. Now, what, specifically, is the action of desiccated thyroid when taken internally?

A. It increases the oxidative mechanisms of the body.

Q. Now, in ordinary lay English, what do you mean by that?

A. The body derives its energy from oxidations. That is, from burning of food stuff with the production of water and carbon dioxide, and certain waste products, just as oxidations occur in a furnace. Now, thyroid, if you permit me to use analogy, acts like a blow torch on the blast furnace. It increases the rate of burning of material. This increase above the rate required for normal metabolism represents increased work on the organs of the body; and an increased wastage of body structure and the storage plants.

Q. Does desiccated thyroid when taken internally act upon the food?

A. No.

Q. What, generally, does it act upon?

A. It acts on the tissues and stimulates them, and in turn, they act on the food.

Q. Does the taking of desiccated thyroid internally stimulate the action of the thyroid gland?

A. No.

Q. What, if anything, may be the action of taking of desiccated thyroid on the heart?

A. It will increase the work of the heart and render what work it does less efficient, in the sense that it will have to put forth greater effort to produce the same amount of internal work.

Q. May that finally result in lesions?

A. No one has demonstrated experimentally lesions produced in a healthy animal's heart. Now, principally, this is done on animals because such an experiment could not be done on humans. Nevertheless, time and again, it has been shown that on a human heart, especially, if it previously has had any form of damage, that one may see an aggravation of the damage up to complete failure by the use of thyroid.

Q. These statements that you have made in regard to the deleterious effects of desiccated thyroid upon the human body, are those the result of experimentation, or are any of them?

A. The statements I have made, yes. Many of these facts have been experimentally shown. Another portion of the facts are known from clinical experience, where people have come to doctors after having taken thyroid by themselves.

Q. Now, state those things that you have mentioned that have been demonstrated by experimentation.

Mr. Gust: You mean the witness has demonstrated or he has read books about?

Mr. Michael: Well, either one.

Mr. Gust: Well, I would like to have him distinguish.

The Witness: A: Well, it is known in the physiological literature that thyroid increases the activity and the work of the heart, and at the same time renders it less efficient. I have worked in this field myself with Dr. L. N. Katts; who is a recognized cardiologist on isolated heart under standard conditions, and we were able to show that thyroid extract did increase the work and decrease the efficiency of the heart. It is a standard, almost a standard experimental feature to give thyroid to increase the rate and work of the heart.

Do you wish me to go on with the other tissues?

By Mr. Michael:

Q. Yes.

A. Thyroid is known to increase the activity and oxidative metabolism and secretory abilities of the liver. In this field, I, myself, have done a great deal of work to show that thyroid decreases the ability of the liver to store glycogen, which is the carbohydrate storage material, and which is the productive agency in the liver. It is known by many



experiments; I, myself, have shown it, that a liver with a poor store of glycogen is a liver susceptible to damage. Thyroid increases susceptibility of the liver to damage, not only by increasing its work, but by causing removal of this storage material, glycogen, which protects the liver.

It is known in the literature, that the best way to treat damaged kidneys, that is kidneys in a person with nephritis, is to decrease the protein metabolism as far as one can. Thyroid is deleterious in that it increases protein metabolism, and causes the appearance of a greater amount of protein by-products of waste products in the blood, and, therefore, causes the kidneys to do more work in excreting these waste products.

By Examiner Norwood:

Q. With reference to those two things, regarding the liver and the kidneys, what effect would that have in a case of diabetes and Bright's disease?

A. Thyroid increases both those conditions. That is another condition in which I am particularly interested. It is a well-known fact that any diabetic who receives thyroid at once requires more insulin to control him; and it is also clinically known that Bright's disease may be actuated by taking thyroid.

Here we must distinguish between a strictly toxic condition, which was formerly believed to be a form of Bright's disease, now known not to be, and the nephritis I am referring to, strictly to nephritis, which is now, what formerly was thought to be Bright's disease, or called Bright's disease.

By Mr. Michael:

Q. Now, Doctor, I wish you would enumerate briefly the various bodily conditions that may exist, where it is inadvisable or dangerous to administer desiccated thyroid.

A. Before I enumerate those, I may say that it may

be dangerous to administer thyroid to what appears to be a perfectly normal individual, because it is known a certain number of individuals are sensitive to thyroid, and even small doses will produce acute, severe reaction. However, the principal existing pathological conditions which make thyroid dangerous are mental instability, heart disease, Bright's disease, diabetes, any form of liver damage.

Q. What is your opinion, Doctor, based upon your experimentation and study as to the taking of desiccated thyroid by a so-called normal individual who may not have those particular conditions which you have just referred to, over a considerable period of time, as, for instance, 60 to 90 days, and taking desiccated thyroid regularly at the rate of two grains a day?

A. The taking of thyroid in that way, may not show any apparent harmful effect in some individuals. However, one has to judge from the effect of taking that amount of thyroid of somewhat larger amounts of thyroid, and reason back. It is my opinion, and the opinion of a large majority of the accredited workers in this field, that the taking of such doses of thyroid is dangerous.

Q. To the average individual?

A. To the average individual. I would like to make myself clear on this point, if I may.

Q. All right.

A. The fact that apparent damage is not evident after taking a course of treatment of this sort is not evidence or proof that no damage has been done. It is known that the body has under the best of circumstances, a great reserve and can suffer a great deal of damage, and repair the damage. Nevertheless, the taking of thyroid in this manner would decrease the reserve. It is like putting a hundred pounds of pressure in a boiler that should only normally be taking 50. It means that any weak spot may

blow out. It means that any constitutional or hereditary or functional disability which that person may be subject to, and may avoid if he is careful, it may bring those out, and cause a full-blown condition of the disease. Therefore, the chances are all against an individual that takes a course of medication like that, although some individuals might get way with it.

Q. Does desiccated thyroid act directly on the tissues of the body?

A. Yes.

Q. What effect does it have on them?

A. It increases the oxidative metabolism.

Q. Does that mean that they are burned up; they are used up?

A. It means that the wear and tear on the tissues, since each tissue may be considered as a working part of the true mechanism, the wear and tear of the part is greater.

Q. Well, oxidation is burning?

A. Yes, in a chemical sense.

Q. Now, in taking desiccated thyroid, has your training and experience and experimentation shown that it acts on any particular tissue, or does it act on the tissues generally?

A. It is a general oxidative stimulant; in other words, it acts on all, most tissues.

Q. But I believe you stated heretofore that it is more apt to attack a weak spot.

A. Yes.

Q. In that oxidation process, does it also oxidize body fat?

A. It causes the tissues to oxidize more body fat.

Q. Is that the explanation of the effect of desiccated thyroid on reduction in weight, or is it the effect upon the tissues and the fat?

A. I am afraid I cannot answer that briefly. I would like to be able to tell you.

Examiner Norwood: Answer it any way you wish.

The Witness: A: Whether an individual loses fat, or not, depends upon the balance between the amount of energy consumed in the processes of the body and the amount of energy taken in as food. It is a balance, just as there is the law of conservation of energy in nature, what must go up must come down, and so forth, so there is a law of conservation in the body. One cannot derive energy without taking food.

Now, thyroid acts by increasing the expenditure of energy. If the intake of energy in the form of food remains the same, you lose weight. However, it is perfectly possible, and I have seen it time and again, not to lose weight when one takes thyroid, because, if one at the same time increases the caloric intake as one increases the energy of expenditure, they may balance again in spite of the fact the body is working harder for more food is being taken in, and no weight is lost. When it does cause loss of weight, it causes loss of weight by increasing the energy expenditure over the energy intake.

By Examiner Norwood:

Q. Does this increase in metabolism have a tendency to increase the appetite?

A. In some individuals, it does.

By Mr. Michael:

Q. Doctor, what general classes of obesity are there?

A. Obesity has been classified into the alimentary type, that is the type caused by excessive alimentation or feeding; and the endocrine type, which is due to a disturbance of the endocrine glands. In the opinion of most individuals, who subscribe to that idea of a deficiency of the

thyroid gland, there have been other classifications which also say that there is such a thing as pituitary obesity, due to deficiency of the pituitary gland, and gonadal type of obesity, due to deficient gonads. There are other classifications which also include the neurogenetic type. That is one which is due to a disfunction of the base of the brain.

However, regardless of the type of obesity, regardless of what underlying mechanism there may be, what I said before holds true, that obesity fundamentally must be alimentary in nature and must depend on a balance between the energy intake and energy output. The endocrine disorder may influence the distribution of fat, but unless they lower the metabolism, they will not influence the amount of fat.

By Mr. Michael.

Q. What is understood by the term "endogenous obesity"?

A. Endogenous obesity has been used synonymously with endocrine obesity.

Q. And what is the meaning of the term "exogenous"?

A. That has been used synonymously with alimentary obesity.

Q. Now, can you give us an idea, acquired from your reading and experience, and the authorities on the question as to the approximate percentage between the cases of exogenous obesity and endogenous obesity?

A. I cannot give you any percentage figure, but I can say that the vast majority of obesities are exogenous or alimentary.

Q. Is it sometimes stated by the authorities it is as high as 98 per cent?

Mr. Gust: I object to that, what the authorities sometimes state, not being the proper way to prove it.





Mr. Michael: Change that to modern authorities.

Mr. Gust: Well, that is still objectionable.

Examiner Norwood: He can state it scientifically as to the percentage. Do you object to the question as leading?

Mr. Gust: No, I am objecting to it for the more fundamental reason, I do not think that the Doctor should be permitted to testify as to what the opinion expressed in the vast majority of scientific writers, or, for that matter, in the opinion of any scientific writer, that their opinion is admissible here. It ought to be proved in another way.

Mr. Michael: I am not asking for any specific authority.

Examiner Norwood: If their opinion is his opinion, he can give it.

Mr. Gust: Well, would you read the question, please? (Question read.)

Examiner Norwood: Well, I will sustain the objection as to the form. I think you can make it more satisfactory.

By Mr. Michael:

Q. Doctor, basing your answer upon authorities with which you may be familiar, of modern date, what is the consensus of opinion of such authorities as to the percentage of exogenous obesity?

Mr. Gust: That is objected to, if the court please. The witness ought not to be permitted to give his opinion as the consensus of other people's opinion.

Examiner Norwood: I think he can give the consensus of scientific opinion as based on his studies, and reading, and observation. The objection is overruled.

The Witness: A: It is the consensus of scientific opinion that the alimentary or exogenous type of obesity forms the large or vast majority of cases of obesity which

present themselves. I am not prepared to give a percentage figure.

By Examiner Norwood:

Q. Is that your opinion?

A. Yes, it is my opinion and my observation.

By Mr. Michael:

Q. If you would express your own opinion, in matters of percentage, how would you designate it in order to express the distinction?

Mr. Gust: Same objection.

Examiner Norwood: Please read the question.

(Question read.)

Examiner Norwood: He has already stated that he cannot give the exact percentage.

Mr. Michael: Well, I am asking his own opinion.

Examiner Norwood: The objection is overruled. Do you understand the question?

The Witness: I would like to hear it again, please?

(Question read.)

The Witness: A: Well, in order to answer that question, without giving you an exact percentage, I would have to tell you the order or magnitude; in other words, I would say the order of magnitude would be in the neighborhood of, say, a hundred to one.

By Mr. Michael:

Q. That is, a hundred of the exogenous to one of the endogenous?

A. Yes.

Q. And those endogenous cases would include all the endocrine varieties which include the thyroid?

A. Cases where there is a deficiency of the thyroid, yes.

Q. Generally speaking, Doctor, is desiccated thyroid indicated in any cases of obesity except that due to the disfunction of the thyroid gland?

A. No.

Examiner Norwood: Will you read that?

(Question and answer read.)

By Mr. Michael:

Q. Doctor, there has been given in evidence here a formula for a proprietary medicine known as Marmola, and I will hand you a copy of that formula which has been given in evidence, without stating it into the record specifically. I wish you would examine that formula and state what ingredient or ingredients have an effect, a therapeutic effect, upon cases of obesity.

A. Desiccated thyroid.

Q. Any other there?

A. Not to my knowledge.

Q. In your opinion, Doctor, would such a medicine with the proportions of ingredients as indicated in the formula I have presented to you, be advisable or safe for a person to take, a layman to take for self-medication, taking four doses a day, one immediately after each meal and one before retiring, for a continuous period of from sixty to ninety days?

A. No.

Examiner Norwood: The question and answer are based on this formula which has been read into the record and acknowledged to be the formula for Marmola.

(Discussion off the record.)

Mr. Gust: I agree that the Doctor has been shown the formula for Marmola.

Mr. Michael: And do you make that agreement as to all witnesses, so that we will not have to put the formula in each time?

Mr. Gust: They may all be shown this same paper without marking it as an exhibit. It is the correct formula.

By Mr. Michael:

Q. Doctor, does the use of a medicine as indicated in your previous question, in the dosage as indicated, and over the period of time, constitute a scientific treatment for obesity?

A. No.

Q. Is it a safe treatment?

A. No.

Q. Now, I wish you would mention the kinds of obesity that are caused by disfunction of the ductless glands, other than thyroid, and state what the effect of the taking of thyroid is in such cases.

A. Well, the other types of obesity would be pituitary obesity and gonadal obesity, sometimes called hypogonadal; it is decreased function of the gonads. The action of thyroid in these conditions would be the action of thyroid in any condition; that is, it would increase the work of the body, and increase the caloric expenditure over and above the food intake, that is, if the food intake remains the same, if it did cause a disproportionate wastage of energy it would cause loss of weight. If an increase were taken at the same time, it would not cause loss of weight; but in either case, it would increase the work of all the bodily tissues.

Q. In other words, is desiccated thyroid indicated in the treatment of such cases?

A. No.

Q. Is it deleterious in such cases?

A. It may be.

By Examiner Norwood:

Q. By "indicated," you mean prescribed or recommended for the cases?

A. I take it he means would I recommend it.

Q. Would physicians prescribe it?

(Discussion off the record.)

By Mr. Michael.

Q. Do I understand, Doctor, that when a physician states that a medicine is indicated for a certain condition or disease, that it is desirable or adapted to the treatment of the same?

A. Yes.

By Mr. Gust:

Q. In a physician's opinion? You mean in that particular physician's opinion? Is that a fair addition?

Mr. Michael: Well, I do not think it is necessary on this question.

Mr. Gust: Then I object to it, being leading.

Examiner Norwood: I think I will let the explanation of it stand. The objection is overruled.

By Mr. Michael:

Q. Doctor, will you please explain what you mean by "indicated" in referring to the use of medicine?

A. "Indicated" is used by physicians to mean that it is generally understood by physicians that a certain drug which is indicated is the proper treatment for the condition for which it is used.

Q. Doctor, should all persons who are overweight, reduce?

A. No.

Q. I wish you would explain that.

A. There are certain individuals in which, even though they were overweight, if they were admittedly overweight, it would be wise for them not to reduce. Such individuals are ones that have a tubercular history; that is, one who had previously had an attack of tuberculosis, or who was—show signs even if they have had no open attack, of a tubercular process in the lungs. Such an individual should certainly not reduce, even though he is overweight.



Q. - Does desiccated thyroid necessarily and always cause weight reduction?

A. No.

Q. Will you explain that.

A. As I have previously indicated, desiccated thyroid may not cause weight reduction if at the same time as one stimulates the metabolism with thyroid, one increases the food intake. In other words, no thyroid is not, in itself, a treatment of obesity, but must be used in conjunction with supervision of the patient.

Q. Now, am I right in assuming, Doctor, that you, in one of your previous answers you explained the meaning of metabolism?

A. Yes. I gave a general explanation of it.

Q. Was your answer complete on that subject, or do you care to elaborate further on it?

A. No, I do not care to elaborate on it.

Q. Does desiccated thyroid affect metabolism?

A. Yes, sir. It increases the rate of metabolism?

Q. What do you mean by basal metabolism.

A. The basal metabolism is an arbitrary measure of the rate of metabolism. I say that it is an arbitrary measure, because the standards, or the conditions under which the basal metabolism reading or test is made are arbitrarily set with the point in view of setting conditions which can be readily duplicated by anybody who wants to make such a measurement.

Now, the metabolism test is called basal because it is done in the resting state, and in the post-absorptive state, that is eight to twelve hours after the last food has been taken and after the patient has rested for half an hour. Those are the standards, conditions. That test could just as easily have been designated that it is to be taken after the patient has run around the block, or after

the patient has walked up eight flights, and it would be easy to duplicate, as after food has not been taken for eight to twelve hours, and after the patient has rested for half an hour.

Now, basal metabolism test depends upon measuring the rate of oxygen consumption by that patient for a standard period of time under those conditions, and then calculating the number of cubic centimeters of oxygen consumption per unit of the patient. The unit that has been chosen again could be readily calculated, is the surface area of the patient, because there is a proportional between expenditure at a surface area, a surface area of the patient. The basal metabolism is, therefore, a measure of the amount of energy produced, the amount of heat produced, and as judged by the amount of oxygen consumed, based on a mathematical calculation, just as if one were to burn an unknown quantity of wood, and know that a certain amount of oxygen is consumed, knowing how much oxygen combines with a certain amount of carbon, one can then calculate how much wood must have been burned.

In the same way, basal metabolism calculates the amount of energy consumed.

Q. Now, is basal metabolism in the obese subnormal, usually?

A. No. That has been a common belief among people without, and even medical, physicians, I should say, without scientific training, that is the training in the fundamental sciences, that the basal metabolism is inclined to be low in obese people. This view is based on a self-interpretation of the basal metabolism test. In order to see whether the results of a test are normal, or high, or low, it is necessary to compare the reading that one gets from a patient with standards.

Now, these standards are based upon basal metabolism determination, and large numbers of supposedly normal individuals. Now, a normal individual contains a certain proportion of active tissue, that is, muscles, and liver and tissues which use oxygen, and inactive tissues, such as fat; fat is practically inert, and uses very little, if any oxygen.

Now, if one tests an obese individual, and say he uses, say a hundred cc of oxygen per unit, one is adding into that unit a lot of inert tissue. Actually, his active tissues, which are using a lot more than the active tissues of a normal, based on the same standards. In other words, by the method of calculation for one, basis calculation of basal metabolism on the actual weight of an obese person, that reading is falsely low. One gets much nearer the estimate if one bases it on the ideal weight of the individual rather than the actual weight of an obese; and I might say that contrarywise, basal metabolism of extremely emaciated people is falsely high; that is known to people who are concerned with work with the basal metabolism.

Q. Now, would you, then, basing it on your experience and your scientific training in that field, and study, use the basal metabolism test in diagnosing a case of obesity?

A. Yes, I would use that as well as any other form of observation of the patient; but one cannot base the diagnosis of obesity on a basal metabolism test.

Q. That is alone?

A. No.

Q. Granting that a patient—that desiccated thyroid would cause weight reduction, or loss of fat, is that permanent, or is that a cure for the condition?

A. No, it is by no means a cure, for this reason: that granting that an individual taking thyroid maintains the

same food intake as before, granting, therefore, that during the taking of the thyroid his energy expenditure becomes greater than his caloric intake, therefore, he loses weight. If that patient has not changed his food habits, the minute he stops taking thyroid, he is again back where he started, and he will gain all the weight back. So it is by no means a cure.

Q. What symptom or symptoms are there, Doctor, that would indicate that desiccated thyroid should be administered to an obese person?

A. The most rational indication is hypothyroidism, and symptoms of hypothyroidism. Do you wish me to enumerate those?

By Examiner Norwood.

Q. Yes.

A. A hypothyroid individual is usually one with a lethargic expression, with a puffy skin, which does not pit upon pressure, and hence, is called myxedematous or false edema; and one who may be mentally subnormal, who may suffer from skin disorders because of poor nutrition to the skin, and who because of the low rate of metabolism, from a lack of proper heat production, may feel cold even when other people feel comfortable; such an individual, if she be a woman, may be suffering from certain sex disorders, such as sterility or excess menstruation. If the patient be a man, he may be suffering from impotence or sterility, and many of them also suffer from constipation.

By Mr. Michael:

Q. Can a layman determine for himself whether he is suffering from hypothyroidism?

Mr. Gust: I object to that, as the Doctor is not qualified to state what the layman can determine.

Examiner Norwood: If he does not know, and cannot state it, who can?

Mr. Gust: I am afraid he cannot. He cannot speak for me. I am a layman, and whether I can diagnose it or not, I would hate to have him speak for me.

Examiner Norwood: Objection overruled.

The Witness: May I hear the question, please.  
(Question read by the reporter.)

The Witness: A. No.

By Mr. Michael:

Q. Is desiccated thyroid a suitable medication for a woman during pregnancy?

A. No.

Q. Is it suitable if there is a history of venereal disease of any kind?

A. It may be. You would have to be more specific in your question.

Q. Well, state the circumstances where it would not be.

Mr. Gust: Would or would not.

By Mr. Michael:

Q. Would not be suitable.

A. Well, in the acute cases of almost any inflammatory disease; that is, in the acute stages, such as an acute inflammation of the genital organs, or acute inflammation of the eye, or of the joints, as may occur, say, with gonorrhea, which is one of the venereal diseases, or in the secondary stage of syphilis, it would on general principles be inadvisable to use anything which would stimulate the activities of the tissues.

Q. I wish you would look at the formula of Marmola, a copy of which I hand you, and which has been given in evidence here by testimony, and state what ingredients in Marmola are laxative, or have laxative or cathartic effects.

A. Certainly, the extract of cascara sagrada has a



laxative effect; and the desiccated thyroid itself often has a laxative effect, because just as it stimulates every tissue, it may stimulate the intestines to increased activity.

The calcium carbonate might be considered as a very mild laxative. Those are the ones.

Q. Doctor, I wish you would look at the formula to which I have just referred, again, and consider it from the standpoint of its laxative ingredients; and state whether or not, in your opinion, the taking of that medicine for a period of sixty to ninety days, at a dosage of one dose after each meal, and another dose before retiring, would tend to be injurious and create the laxative habit, or reliance on laxatives for bowel movements

Mr. Gust: That is objected to as not being within the issues of the complaint. There is no claim in this present complaint that the Marmola has any tendency to cause a laxative habit.

Examiner Norwood: It is stated that it is injurious. Read the question.

(Question read by the reporter.)

Examiner Norwood: The objection is overruled.

The Witness: It might, in some individuals.

By Mr. Michael:

Q. Would such effect be increased, Doctor, by the recommendation of the use of an additional laxative with the treatment which laxative contains, cascara sagrada, and other laxative ingredients.

Mr. Gust: That is objected to as being even further outside of the scope of the complaint. There is no mention of the other laxatives in the complaint at all.

Examiner Norwood: I think there is testimony here, that they recommend another laxative to use with this.

Mr. Michael: It is on the exhibits.

Mr. Gust: There is nothing of that sort in the complaint we are proceeded against.

Examiner Norwood. The objection is overruled.

By Mr. Michael:

Q. What is the question?

(Question read by the reporter.)

A. Yes.

Q. Is the use of such a medicine for reduction, of the formula which you have just referred to, a rational and scientific method of reduction?

A. No.

Q. What is the rational and recognized method of reduction, generally speaking?

Mr. Gust: Objected to, we object to his giving what is generally speaking.

Examiner Norwood: Read the question.

(Question read by the reporter.)

Examiner Norwood: Will you eliminate the "generally speaking"?

Mr. Michael: Yes.

Examiner Norwood: Then do you withdraw your objection?

Mr. Gust: Did he eliminate that?

Examiner Norwood: He eliminated it.

(Question read by the reporter, as follows: What is the rational and recognized method of reduction?)

Mr. Gust: Well, I object to what the Doctor says is his opinion of what is or is not recognized as rational.

Examiner Norwood: The objection is overruled.

The Witness: The rational and recognized method of reduction is to diagnose the cause of the obesity in an individual by careful examination and whatever tests are necessary.

The reduction of the obesity must depend upon decreasing the energy intake in the form of food below that of the energy expenditure in the form of heat and muscular work. The method by which such adjustment of these two energies is obtained must depend on the individual patient. If that patient is suffering from hypothyroidism, and because of that the energy expenditure is abnormally low, then it is rational and recognized to increase the metabolism of that individual by giving desiccated thyroid. However, the result of giving desiccated thyroid in an individual, and a certain dose, can not be predicted. It must be given to the patient, and the patient must be watched at more or less close intervals, and the dose adjusted or omitted or increased according to the reaction of the particular individual to the particular dose of thyroid.

If there is no disfunction of the thyroid gland, and these form the large majority of cases, then the rational and recognized method of treatment is to decrease the dietary intake. The other forms of treatment, such as exercise, cabinet bath, massage are in most cases merely adjuncts to keep the patient feeling physically fit, to increase the amount of blood supply to the skin so that it does not become wrinkled when the patient loses weight.

The main treatment is to reduce the dietary intake.

Q. Doctor, is it possible for the ordinary individual for himself to determine whether or not he has such conditions existing in himself that are abnormal or defective or diseased, so as to make it inadvisable or harmful for him to take desiccated thyroid.

Mr. Gust: I object to the Doctor testifying what it is possible for an ordinary person to determine. It is the same objection I made earlier.

Examiner Norwood: The objection is overruled.

The Witness: In many cases it is impossible for the individual to tell.

By Mr. Michael:

Q. Is it true, Doctor, that all modern physicians use desiccated thyroid in the treatment of obesity?

Mr. Gust: Well, I object to that, as the Doctor does not know, obviously.

Examiner Norwood: Read the question.

(Question read by the reporter.)

Examiner Norwood: I do not see why he could not tell that.

Mr. Michael: He would certainly know. He could answer of his own knowledge from those with whom he has come in contact.

Examiner Norwood: The objection is overruled.

(Question read by the reporter.)

Examiner Norwood: You can answer that of your own knowledge?

The witness: Well, the answer is no. I must qualify it, however. Do you mean every single case of obesity, or do you mean sometimes in obesity?

By Mr. Michael:

Q. Well, qualify any exceptions you may have.

A. The modern physician does not use thyroid except in a certain smaller group of obesities, where there can be said to be a specific need for thyroid, such as I indicated before, evidence of hypothyroidism.

Q. Now, in your opinion, could it truthfully be said that if an obese person were to go to a physician, the physician would give him desiccated thyroid, the active agent in Marmola?

Mr. Gust: I object to that as not being the proper subject for this Doctor's opinion.

(Question read by the reporter.)

Mr. Michael: I am quoting from the complaint, which is based on the literature of the Respondent.

Examiner Norwood: I do not know exactly what that question means.

(Question read by the reporter.)

Examiner Norwood: Off the record, please.

(Discussion off the record.)

Examiner Norwood: The objection is sustained. We will take a short recess.

(Whereupon a short recess was taken.)

By Mr. Michael:

Q. Doctor, I will hand you Commission's Exhibit No. 1-D, which is a booklet, and ask you to refer to pages 23 and 24 of the same, on which are tables of weights at certain ages and certain heights; and ask you to state whether in your opinion those weights therein indicated are normal weights for the ages and the heights as indicated?

A. To the best of my knowledge these are normal weights for men and women of these particular heights and ages.

Q. Would you say that they were normal weights or average weights?

A. Well, such tables, it is only possible to make such tables by taking statistical averages of large numbers of presumably normal individuals.

Now, the percentage variation of individuals in the group from which an average is taken, is, of course, not given here. It is quite possible that a certain individual who, if he were taken in in the group that are average, to give a particular figure, would be quite a bit different from the weight that is given here.

Q. And he would be perfectly normal weight for his age and height?



A. Yes, because as I said, the individuals chosen are presumably normal. In other words, one can not select them of a certain weight and average them. One selects presumably normal people and averages them.

Q. So, in other words, if you were speaking correctly you could not call those weights anything more than an average of a class?

A. Right.

Mr. Gust: I object to that as leading.

Examiner Norwood: The objection is overruled.

By Mr. Michael:

Q. Now, doctor, could a person take such a table of average weights and determine what his normal weight should probably be?

A. Do I understand the question correctly? Do you mean a lay person without training in such matters?

Q. Yes.

A. The answer is no.

Q. Would it be possible or proper for a lay person to be guided by such a table in determining how much he should reduce if he attempts to reduce?

Mr. Gust: I object to that. That is calling for an opinion which is not proper from this witness.

Examiner Norwood: The objection is overruled.

The Witness: I shall have to qualify my answer in this way, that the proper weight of an individual when it comes to the specific individual, must not only be determined by what the average of some individuals is, but also by the constitution of that individual.

In other words, some of us are built short and squatty, and some of us are built long and thin; and some of us are mixtures. Now, for the same height and age, and sex, it is, therefore, not proper to say that this is what he should

weigh without qualifications as to constitution and type of individual.

Q. Would you, therefore, consider that this would be a safe guide to a layman in determining how much he should reduce?

A. It would not be an accurate guide.

Q. Well, if it is not accurate, should he be guided by such?

Mr. Gust: I object to that as a conclusion.

Examiner Norwood: The objection is overruled.

The Witness: No.

By Mr. Michael:

Q. Doctor, in your experience with obese persons, and in your study of the histories of such cases, and also of persons who seek to reduce, you may state whether or not it is true that a large percentage of persons who seek to reduce are not abnormally overweight?

A. I believe that I have had many people come to me for weight reduction who did not properly need weight reduction. This applies, of course, particularly to women who wish to increase the aesthetic value of their figures.

Q. Now, is it inadvisable or unsafe for such persons to reduce by the taking of desiccated thyroid?

A. It is inadvisable; and it may be unsafe.

Mr. Michael: I believe that is all.

#### Cross-Examination

By Mr. Gust:

Q. How old are you, Doctor?

A. Thirty-two.

Q. In what year did you graduate from the Toronto school you mentioned?

A. Do you mean my medical degree, or my degree as Doctor of Philosophy?

Q. Your medical degree.

A. 1926.

Q. And what year was your Doctor of Philosophy?

A. 1929.

Q. And when was it that you went to the Michael Reese Hospital?

A. 1929.

Q. Prior to that time you had not actively practiced medicine at all, had you?

A. Well, I was taking my Doctor of Philosophy. I did not practice medicine.

Q. When did you become licensed to practice medicine in Illinois?

A. I am not licensed to practice in Illinois. I have got no private practice in Illinois.

Q. So you have never treated a patient for pay in Illinois?

A. Not for personal pay, no.

Q. And you have no license to practice in the State of Illinois?

A. No. My license to practice is in Ontario, Canada.

Q. But you have never practiced in Ontario, is that right?

A. I have never been engaged in private practice.

Q. Your work has been entirely then research work, has it?

A. No.

Q. What other work have you engaged in?

A. I am in charge of the Metabolic and Endocrinology, of the Out Patients Dispensary at Michael Reese Hospital, and have been since 1929.

Q. I suppose you do that work then under other licensed physicians as their assistant, is that right?

A. No.

Q. It does not require a license in Illinois to treat patients?

A. I am an employe of the hospital, and as such am in charge of the Out Patients Dispensary. I have medical consultants.

Q. And the medical consultants do the prescribing?

A. No.

Q. Do you prescribe for patients?

A. Certainly.

Q. Without a license?

A. As a hospital employe.

Q. Without a license?

A. Right.

Q. Now, you have prescribed thyroid, have you?

A. Yes.

Q. And you prescribed that for obesity, have you?

A. For certain cases of obesity, yes.

Q. You have prescribed it for a number of years, have you?

A. On and off, yes.

Q. Do you dispense it yourself, or write prescriptions for it?

A. No. Write prescriptions.

Q. On what druggists do you write prescriptions?

A. The hospital dispensary. It is an order to the hospital dispensary to dispense.

Q. Then it is dispensed under some other physician or person?

A. It is dispensed by the hospital.

Q. Did you ever take the examination in Illinois to practice medicine?

A. No.

Q. Well, now Doctor, I think you stated that it was your opinion that thyroid when taken in the human body, acted as a stimulant to the oxidizing processes that normally go on in the human body. Is that right?

A. Yes.

Q. And that is its only action, I think you stated?

A. No.

Q. It is not its only action?

A. No.

Q. What other action does it have?

A. It increases the irritability of the nervous system, whether that is done by increasing the oxidated mechanisms, or whether there is some specific action there as well, is not known.

Q. Well, then, the only observable phenomena that gives is the increase in oxidizing, and the stimulus to the nervous system?

A. Not at all. There are other observable phenomena, such as increase in the rate of the heart.

Q. Well, now, it does increase the metabolic rate, does it?

A. Yes.

Q. What other things increases the metabolic rate?

A. One can increase the metabolic rate by the use of such materials as—the name escapes me for a moment—dinitrophenol.

Q. You can increase the metabolic rate with exercise?

A. Yes.

Q. And you can increase it with ingestion of food?

A. Right; temporarily.

Q. Temporarily?

A. Right.



Q. This dinitrophenol that you speak about is a fairly recent medicant, isn't it?

A. Fairly recent and very dangerous.

Q. It would be far more dangerous than thyroid, would it not?

A. Yes, it is even worse than thyroid.

Q. Just what limit do you think that the basal metabolic rate is normal, I mean what variation is permitted and still called normal?

A. Like all biologic tests, it has a considerable variation. It is possible to have normal individuals who have basal rates which vary as much as fifteen per cent over, or fifteen per cent under what is called normal. The only way you can distinguish those individuals is by other clinical signs and examination.

Q. This basal metabolic test is at best an approximation; I take it?

A. Well, I do not understand what you mean. Approximation of what?

Q. It takes into account only the oxidizing process, does it?

A. Yes. It takes the oxidative utilization as an index. That in itself is exact. Inexactness does not lie in the measure of the oxidation. The inexactness lies in the application of the standards as to what is normal, because of the variation of biological material.

Q. You must assume a norm for a person with a given surface area?

A. Yes and that norm is based on average standards.

Q. That norm is based on average standards as has been determined by the use of this machine?

A. Right.

Q. So I take it that that is not an ideal scientific situation, is it?

A. No, it is not an ideal scientific situation.

Q. No?

A. It is the only practical way we have of objectively measuring it.

Q. At the present time?

A. At the present time.

Q. And how long have you had these machines?

A. These machines have been used very extensively in the last ten years, and less extensively previously.

Q. I take it that the machine does not take into consideration the nitrophyng processes that go on in the body?

A. What do you mean by that?

Q. Are there any nitrophyng processes that normally go on in the body?

A. I do not know what you mean by nitrophyng. If you mean the liberation of nitrogen from nitrogenous compounds?

Q. Yes.

A. The nitrogen is limited in the breakdown of protein particularly.

Q. Does this machine take into account or measure that in any way?

A. It includes that. It does not measure that specifically. It includes that because in the breakdown of the protein for energy purposes, nitrogen is liberated and the oxygen which is used in the oxidation of protein is part of the oxygen which the machine measures.

Q. It takes it into consideration to the extent that oxygen is used in the process?

A. Yes.

Q. And that is the only way it takes it into consideration?

A. That is what you are measuring, oxygen consumption.

Q. Oxygen consumption. Now, I take it that it is pretty hard to get an accurate metabolic test that you want to absolutely rely upon, isn't it?

A. No.

Q. It is not?

A. A well trained technician can take them very accurately.

Q. Does the patient's mental condition have anything to do?

A. Serious disturbances in mental condition, unrest, restlessness, may effect the basal metabolism.

Q. Serious worries or fears in the patient's mind may affect it?

A. There is very little evidence to show that worry can raise the basal metabolism significantly. It may be measured in fine quantities of oxygen, one may see some changes; but since your variation of error is fifteen per cent, that usually washes out such small errors.

Q. I take it, it was by reason of the possibility of error that you set up this large variation of really thirty per cent, isn't it, fifteen above or fifteen below?

A. What do you mean by setting up? I do not quite understand.

Q. Well, you understand, I am just a layman, Doctor. I am not able to talk your language?

A. Yes. Well, I want to understand, just what you mean.

Q. I was trying to say that it was because of the possibility of error that you assume this normal, either fifteen above or fifteen below as being normal, as being accurate as you want it?

A. What I meant to say, and I do not wish to change it, what I would like to bring out, now that you ask this question, is this: That in general the test is simply a spe-

specific figure for that individual which has to be compared to standards. Now, that is the same as the standard for the individual we called normal. We remember in interpreting the test, as to seeing what that means, that we may have as much as fifteen per cent variation plus, or fifteen per cent variation minus, and it would still be possible to have a normal individual, that we have to judge when we examine the patient.

Q. That depends upon the judgment of the technician?

A. Of the physician. No, not the technician. The technician simply measures the amount of oxygen and gives the report in terms of the standard. It is the physician himself who must evaluate what the test means.

Q. Then, we have the technician's results interpreted by the Doctor?

A. Right.

Q. Now, have you ever made any studies of tests as to how much one, two or five grains of thyroid would raise this basal metabolic rate?

A. Yes.

Q. What tests have you made in that connection?

A. I have given thyroid not only to individuals who had their thyroids removed and were now suffering from a low basal, but I have also given it for normal individuals, for experimental purposes.

Q. Have you ever given it to any person without any thyroid glands in the body at all?

A. Without any thyroid gland, no.

Q. Yes.

A. Such an individual would be a great rarity.

Q. They do exist.

A. Just recently they have been removing thyroids for other conditions completely, and there now exist some in-

dividuals, but up to about a year or two years ago there were no such individuals, practically.

Q. I think you stated that this thyroid was a general stimulant that acted on all the cells in the body?

A. I said that it acted on the tissues of the body. In other words, I meant to say most of the cells of the body. It is quite possible, for instance, as I said, it does not act on the fat cells, for instance, that is stored in the body, but it acts on the active tissue of the body.

Q. Well, I did not mean to change it from cells to tissue intentionally. I thought that was the same, synonymous thing?

A. Well, I mean every cell. There are fat cells which represent storage material. They are not particularly speaking part of the active body. They are simply stored there.

Q. I think, Doctor, that you said that the normal and rational treatment for obesity was for the obese person to go to the Doctor and have a thorough examination and determination of what was causing it. Is that right?

A. That is right.

Q. And the doctor should then prescribe diet, exercise, drugs, or whatever in that doctor's opinion and judgment was indicated?

A. Yes.

Q. And in your judgment there is no other proper way for an obese person to reduce?

A. Right.

Q. In other words, they all ought to go to a doctor?

A. Yes.

Q. And they ought not under any circumstances undertake self-medication?

A. That is right.



Q. I take it that that is your opinion as to any bodily condition?

A. Well, what do you mean?

Mr. Michael: I object to the question.

Examiner Norwood: The objection is overruled.

By Mr. Gust:

Q. Well, any bodily ill. Put it that way.

A. Any bodily ill, yes.

Q. Self-medication is a bad thing, in your judgment?

A. Yes.

Q. And people ought not to undertake it?

A. That is right.

Q. I take it then in your opinion they ought not to undertake self-dieting, if you call that?

Yes, that is right.

Q. They ought to go to a physician to prescribe the right kind of a diet for them, oughtn't they?

A. If they are suffering from a bodily ill; yes.

Q. If they are suffering from obesity they ought to?

A. Yes.

Q. They ought not to undertake self-administered exercise if they are suffering from obesity?

A. No.

Q. They ought not to?

A. No, I do not say that. I do not mean, that I do not believe it.

Q. You think it is all right for them?

A. You said if they are suffering from obesity?

Q. That is right?

A. If they are suffering only from obesity, I do not see why they should go to a doctor to take exercise. If they are suffering from obesity and bodily ill in addition, it might be very important for them to go to a doctor.

Q. Doctor, you said the ordinary person would not know whether he had some bodily ills, would he?

A. That is true.

Q. So he ought to go to find out whether he has any bodily ills, oughtn't he, in your opinion?

A. If what?

Q. If he wants to undertake some exercise in order to reduce his obesity.

A. If an obese person wishes to undertake exercise out of the range of just ordinary exercises for the treatment of his obesity, he should certainly go to a doctor and be examined first.

Q. Well, if he would go to reduce his obesity he has got to undertake exercises out of the range of his ordinary exercise, or he won't reduce, will he?

A. If he wants to do it by exercise alone, he would have to undertake extraordinary activity.

Q. Why, certainly. And you regard it as unsafe for him to undertake it without going to a physician, don't you?

A. May I qualify my answer?

Q. You can answer it any way you wish.

A. The reason I wish to answer yes to this question is the following: That it is well known that obesity itself may injure or hamper the heart not only by being deposited around the heart and restricting its activity, but also by actually infiltrating the cells of the heart, called the so-called fatty heart of obesity. Such individual would be much easier damaged by undue exercise than a normal individual, and therefore, any obese individual before he undertakes undue exercise would be wise to consult a doctor.

Q. And it would be unsafe for him not to?

A. It might be, it depends on the individual.

Q. And it might be unsafe for him to undertake dieting without seeing a physician?

A. Yes.

Q. Well, now, Doctor, if an obese person otherwise normal, except for his obesity, takes thyroid and does not increase the amount of food that he ingests, he will experience some weight reduction, will he not?

A. If an obese person does not increase the amount of food and takes thyroid?

Q. And takes thyroid?

A. Yes, he should lose weight.

Q. He should lose weight. Now, and if he is otherwise normal except for his obesity he will not be injured by this thyroid treatment, will he?

A. I will have to qualify my answer to that. I can say that in many cases there would be no apparent injury, but that does not mean that there would not be any injuries.

Q. Well, in many cases, let's take that, in many cases there would be no apparent injury; in other words, the doctor examining this man after having taken thyroid and reduced his flesh in that manner, would find nothing pathologically wrong with him?

A. Well, if I may answer this in my own way, I would say this, that whether one say that a person has suffered injury or not depends upon what ones criteria of injury are. It depends how fine your method of measuring is.

Q. Let us put it this way, let us not get too theoretical and scientific.

Mr. Hornibrook: I think the witness should be permitted to answer the question in his own way.

Mr. Michael: He had not finished his answer.

The Witness: I had not finished my answer.

Mr. Gust: Well, he has not answered the question.

Examiner Norwood: Let the attorney cross-examine him.

By Mr. Gust:

Q. Well, Doctor Soskin, let us get at this—

Examiner Norwood: Read the last question, please.

(Question read by the reporter.)

Examiner Norwood: Will you complete your answer, Doctor, please.

The Witness: I was going to say that one has to judge what the effects of a minute dose of a drug is, for instance, by what the effects of a larger dose is, by saying a smaller amount of the same effect has happened.

By Mr. Gust:

Q. That is reasoning, purely theoretical, isn't it?

A. No, it is no more theoretical than saying just because you put a pencil on a balanced beam, that weighs one hundred pounds, and a sack of sugar, it does not reflect it has no weight. Of course, it has weight.

Q. Doctor, if I took four or five gallons of water in my stomach, I suppose I would suffer damage. I could take enough to damage myself?

A. Yes, if you drank enough water you could damage yourself.

Q. It does not follow from that, I would suffer a minute part of that greater damage, does it?

A. No, but you said if you drank gallons, a quantity above normal.

Q. All right. Let me ask you this question. Supposing, Doctor, a doctor who does not have access to one of these metabolic machines, and a person normal but obese; in other words, normal except for his obesity, and the doctor prescribes thyroid, and that patient loses weight; do you say that there is anything that may be observed by

that country practitioner in the way of damage or injury to that person?

A. Yes.

Q. What is it? What is the observation?

A. He may observe a weakness of the muscles; he may observe a staring of the eyes. He might observe an increased perspiration; he might observe an increased heart rate, and if the individual formerly had any heart disease he might observe an aggravation of the heart disease.

Q. I am talking about a person otherwise normal.

A. About a person otherwise normal, excuse me.

Q. All right. He might in fact observe any of those things, is that right?

A. You will have to qualify your question. How much thyroid?

Q. How much thyroid?

A. Yes.

Q. Well, how much thyroid have you ever prescribed?

A. I have prescribed as high as six grains a day and as little as half a grain a day.

Q. How much have you ever prescribed to an individual who was obese but otherwise, so far as you could observe, healthy and normal?

A. I have never prescribed except for experimental purposes thyroid to obese persons otherwise normal.

Q. Well, I asked you how much you have ever prescribed if you ever had?

A. For experimental purposes, I have prescribed three grains a day.

Q. Three grains a day. Did you ever prescribe it solely for obesity except in conditions that you thought were hypothyroid?

A. No.

Q. You never did?



A. I will qualify that by saying only for experimental purposes, where it was not treatment, but experiment.

Q. It was experiment; and for how long a period did you prescribe three grains a day?

A. There was no definite stated period. I was looking for effects. I deliberately wished to increase the heart rate.

Q. How long did you give it?

A. It depended on the patient. Sometimes it takes as little as twenty-four hours.

Q. How long have you given it?

A. What is the longest time I have given it?

Q. Yes, that is right?

A. Oh, I think about a week.

Q. About a week. I think you said, Doctor, that some people were sensitive to thyroid?

A. Yes.

Q. And you used the word sensitive, if I remember correctly?

A. Yes.

Q. Would it be correct terminology to say they had an idiosyncrasy for thyroid?

A. Yes.

Q. Some people have those, this sensitiveness for, or idiosyncrasy whichever term you prefer, for a great many substances?

A. Yes.

Q. That is, there are a great many substances to which some people are sensitive?

A. Well, I have to qualify that, that there are various types of sensitivity.

Q. Yes. Some people are sensitive to quinine?

A. Yes.

Q. Is that right?

A. Yes.

Q. And some people are sensitive to aspirin?

A. Yes.

Q. So far as that is concerned, are you prepared to say, Doctor, that there is any other substance that is not inert, that some people may not be sensitive to?

A. People can be sensitive to almost anything. I would like to distinguish between drug sensitiveness and sensitivity to ordinary environment of the individual. Some individuals are sensitive to feathers, or dust.

Q. And give very bad reactions from it?

A. Yes. But all those reactions such as an influence in the environment, are different type of reactions than to a drug.

Q. Let us take them up one at a time. Let us take food, for a minute. Some people are sensitive to food substances?

A. Yes.

Q. Such as what? Strawberries?

A. Tomatoes, strawberries, almost anything at different times and different individuals.

Q. Some people are sensitive to drugs, you say?

A. Oh, I wish to bring out that the use of the word sensitive must be qualified; that it is not the same thing to say a person is sensitive to tomatoes as to say that he is sensitive to a drug.

Q. All right. I will come to that. I do not want to shut you off on that at all. The people who are sensitive to food substances, such as strawberries or tomatoes, get a very bad reaction from taking them internally, do they?

A. Yes, they may.

Q. It will make them sick, is that right?

A. They may.

Q. Now, people that are sensitive to drugs also get a very bad reaction at times. Is that right?

A. Well, I will have to repeat my qualification and explain what I mean.

Q. All right. Maybe this is the time to do it.

A. When we say an individual is sensitive to a drug, we may mean two things. We may mean either that he gets some sort of reaction, as he does to a food to which he is sensitive, that it is, reaction to change blood vessels, to allow leakage of fluid, and so on; or we may mean the individual gets some effect from a minute dose of drugs, as the usual individual gets from a very large dose, so it is in that sense, sensitivity to a drug, that unless you distinguish between what we call sensitivity to a drug and sensitivity to a food.

Q. Don't some people get some reactions from being sensitive to drugs that they get from being sensitive to foods?

A. As I said, one gets to drugs a sensitivity like the sensitivity to food, but also the sensitivity to the drug itself.

Q. All right. That is what I was not quite sure about. In other words, drugs may have two effects as to sensitivity?

A. Right.

Q. That is right. One, the same as to food, and another, that you say that is, they get the same reaction from a smaller dose that other people normally would get from a large dose?

A. That is right.

Q. Is that true of all drugs that we have mentioned, quinine, and aspirin, and some others?

A. It is not so true of aspirin. It is true of thyroid; and it is true of quinine, and some other drugs.

Q. What others, for instance, that come readily to your mind?

A. Digitalis.

Q. What else?

A. Adrenalin; some of the barbiturates.

Q. All of them, as a matter of fact?

A. I am telling you only those that I know of. They are all in the same class; and I know of many of them.

Q. That some people get a much greater reaction than the normal average person gets, is that it?

A. Yes, sir.

Q. Now, Doctor, if an obese person comes to you for treatment, and he is otherwise normal except for his obesity, and refuses to diet or exercise, do you know of any drug you can give him other than thyroid to reduce?

A. You mean to reduce properly?

Q. To reduce at all?

A. Yes.

Q. Well, dinitrophenol.

A. Dinitrophenol.

Q. Are those the only two?

A. No. There are related compounds; if you mean commercially available, they are about the only ones commercially available, yes. But if you mean can you make compounds, certainly there are many compounds which have been investigated which do the same thing.

Q. Well, are there any of them that you regard as safe for a person to take without medical supervision?

A. No.

Q. They are in the same class, then, as to that?

A. Yes.

Q. And so far as that is concerned, that is because in your judgment no medicant ought to be self-administered?

A. Well, that depends upon what you mean by medicant.

Q. Well, any drug that is not inert?

A. Well, I can hardly agree to that, no.

Q. Well, you would say that all of them might be dangerous in some cases?

A. No. I think one has to draw a line somewhere. For instance, if a man who knows he is physically in good health, due to the excesses of the night before, say he drinks too much, has a headache the next morning, I should not think he would have to go to a doctor the next morning to take an aspirin tablet.

Q. Doctor, do you think there is anything, or there is anybody who knows they are in good health?

A. I should say had a medical examination and knows.

Q. Is it all right to take some medicants after he has been to a doctor recently; is that right?

A. Yes, I qualified the type of medicant. I do not think it is anything to make a general statement about.

Q. I think, Doctor, you said that thyroid increased the appetite in some people?

A. I was asked a question whether it did, and I said yes in some cases it does.

Q. Do you think in other cases it does not?

A. I think in some cases there is no visible effect on the appetite.

Q. I think, Doctor, you said that thyroid had a laxative effect?

A. It often has.

Q. Is that general or just occasional?

A. Thyroid may have two possible effects, depending upon the constitution of the individual that takes it. By



stimulating the intestines as well as other tissues it may increase their activity, and therefore, have a laxative effect.

When, however, that stimulant goes beyond a certain point, the intestines become so spastic that instead of the laxative effect one has the reverse or constipated effect.

Q. Well, Doctor, you said that in your treatment of obesity you do only one thing, you give a diet. Is that right?

A. No.

Q. Well, I mean to say for the normal obese person?

A. For the normal individual who is suffering only from obesity, yes.

Q. Nothing but diet.

A. I qualified my other treatment, such as exercises, massage, and so on, as adjuvants, but not as really part of the treatment.

Q. And I take it, you give him a high protein diet, do you, this obese person?

A. No.

Q. A low calory diet?

A. A low calory diet; high carbohydrate diet.

Q. Do you have him weigh his food and prescribe exact weights?

A. It depends on the economic and social intellectual status of the patient. If the patient has servants, can have his food weighed, and so on, he gets that type of instruction. A person working, a working man, can not weigh out his food, or diet value, and different portions of food, and is advised in portions. In other words, we try to set it to the needs of the person.

Q. I take it the ideal situation from your viewpoint is to have weighed?

A. I cannot say that, because with sufficient intelli-

gence and experience and training by a physician, the patient learns what the approximate weight of the average portions of food in his dietary are.

Q. What is the United States Pharmacopoeia dosage of thyroid?

A. I could not tell you.

Q. You do not know. What is the U. S. P. dosage of cascara?

A. I could not tell you.

Q. What is the U. S. P. dosage of bladderwrack?

A. I could not tell you. I do not know that bladderwrack is in the formula?

Q. Do you know whether it is?

A. Bladderwrack.

Q. Bladderwrack.

A. I believe it is an obsolete drug.

Q. Do you know what its action is?

A. No. It has no action that I am aware of.

Q. Did you ever have any experience with it?

A. No.

Q. Did you ever give it to any patient?

A. No.

Q. Do you know the dosage prescribed by the British Pharmacopoeia of thyroid?

A. I am in the habit of looking up the dosage.

Q. Well, do you know? That is what I am asking you?

A. No. I will give you a general answer. I do not remember. I do not memorize the dosage of drugs.

Q. Do you know the dosage of cascara sagrada in British Pharmacopoeia?

A. No.

Q. Now, Doctor, is it your view that with the administration of thyroid, that the fatty, I do not know whether to

call it tissues, deposits, you say—the fatty deposits which have been most recently deposited in the body are usually oxidized first, either by thyroid or by exercise?

A. Not necessarily.

Q. Well, is that the usual way?

A. No.

Q. You do not think so. All right. Doctor, what is the action of cascara sagrada?

A. That is a tonic laxative.

Q. Can you give us a little more information about how that acts?

A. It just causes laxation by increasing the contractility of the intestinal tract.

Q. Will you classify it as a mild laxative?

A. It depends on the dosage.

Q. Would you think a quarter of a grain was a mild or a large dose?

A. I would say that a quarter of a grain is a small dose.

Q. Exceedingly small, or just—

A. I would not call it minute.

Q. How much cascara would you prescribe for a patient for whom you are prescribing a laxative?

A. If I were prescribing cascara, I would, in accordance with my usual procedure, look up the dose of cascara that is recommended by the Pharmacopoeia.

Q. Would you then prescribe it in the doses the Pharmacopoeia recommends?

A. If, by questioning that patient, I found that he was not particularly sensitive to it, I would question him about his previous experience with cascara sagrada.

Q. And if you found he was not particularly sensitive to it, would you prescribe it in the U. S. P. dosage?

A. If I wanted a Pharmacopoeial action, yes. I mean,

I might want a different degree of laxation in a different individual.

Q. You would not prescribe it at all, I take it, unless you had an opportunity of seeing the patient personally?

A. Well, I do not prescribe anything unless I see the patient.

Q. And you would not regard that as being proper procedure to prescribe it without seeing the patient, would you?

A. It depends on the circumstances. If one has observed the action of cascara on a patient and know what the reaction of that patient is, one might prescribe something.

Q. I am talking about a patient you never saw.

A. I would not prescribe anything for a patient I never saw.

Q. Would you regard it safe to prescribe thyroid by a Doctor for patients that he never sees?

A. No.

Q. Or any drug for that matter?

A. Well, as I say, I would not prescribe anything.

Q. Is it part of the problem in reducing obese patients otherwise normal, except for the obesity, to make these patients lose water?

A. No.

Q. That is not part of the problem. I think you said, Doctor, that you did not regard thyroid is indicated with an overweight tubercular patient?

A. That is right.

Q. Do you see very many overweight tubercular patients who have not been treated for their tuberculosis?

A. Do I see overweight tubercular patients who have not been treated medically for their tuberculosis? No.

Q. I take it that tuberculosis is usually associated with weight loss, isn't it?

A. At the time the lesion is active, yes.

Q. And I take it that diabetes is usually associated with weight loss, too, isn't it?

A. Not necessarily. Many diabetics come to the doctor when they are quite obese.

Q. But it is one of the outstanding symptoms of diabetes, is a history of loss of weight, is it not?

A. Yes. But they may still be very markedly overweight when they come to the doctor.

Q. If they were sufficiently overweight to start with?

A. Yes.

Q. But nevertheless, a person who has diabetes experiences very early a loss of weight, doesn't he, usually?

A. Well, he may experience minor loss of weight very early, but the marked loss of weight always comes later in the disease, regardless of whether the patient has noticed it or not.

Q. Doctor, in desiccated thyroid, we really have some protein, don't we?

A. In desiccated thyroid, yes.

Q. And we really have what the medical profession terms a hormone?

A. It is generally considered, but not absolutely proven.

Q. No, nobody has ever proved that that is so; but that is now, that is your best theory at the present time, isn't it?

A. Yes. It is a provisional theory, admitted provisionally.

Q. That there is a hormone; and anything else?

A. Besides a hormone in desiccated thyroid?

Q. Yes.

A. Yes, protein, as you stated.



Q. Anything else?

A. There may be traces of carbohydrate.

Q. But essentially protein material and some sort of active hormone, is that right?

A. That is right.

Q. So far as you know, in your opinion that hormone is the effective agent in the thyroid action, isn't that right?

A. Yes, that is right.

Q. That is, as you say, still very theoretical, provisionally accepted, or something?

A. I say it is provisionally accepted as being a hormone theory. There are individuals who do not believe it is the actual hormone, only related to it.

Q. It is believed by the medical profession that the thyroid gland in the human body produces that same hormone, is it?

A. Again one has to add the reservation which is by those that believe that desiccated thyroid represents the hormone, they would believe that the thyroid secretes that material; the others would not.

Q. What do the others believe about it?

A. The others believe that the actual thyroid hormone makes a substance which is chemically related to what we find in desiccated thyroid, but sufficiently different so that its physiological actions would be somewhat different.

Q. Well, are there two schools of thought, so to speak, about it in the profession?

A. Well, there are always two schools of thought, in this sense. I would like to elaborate on that. There is always the general broad outline which the general man, who is not a specialist in the field knows and uses practically; and then there is the field of thought of the individual who is working on the borderline of the science, and who doubts

some questions or things which other people may take as established.

Q. You do not take it either theory is established, as I understand?

A. I do not believe that there is final proof for either.

Q. But your present view is that you provisionally accept the hormone theory, is that it?

A. My personal view is that the desiccated thyroid does not probably represent the actual hormone as secreted by the thyroid gland.

Q. You belong to that school?

A. Yes.

Q. While some people think it does, is that it?

A. Yes, sir. There are some that believe that it does.

Q. Now, do you believe that the thyroid gland in the human body produces the hormone?

A. Yes.

Q. But you do not believe a desiccated thyroid contains that same hormone, is that it?

A. I do not believe that desiccated thyroid is identical with the hormone as it is secreted into the blood stream from the gland.

Q. Well, now, do you believe that this hormone that is produced by the individual's own thyroid controls or affects metabolism, don't you?

A. It affects it, yes.

Q. It affects it; and you believe it affects it by stimulating the oxidizing process of the body?

A. Yes.

Q. And do you believe that desiccated thyroid also stimulates the oxidizing process of the body, do you?

A. Yes, that has been shown by experiment to be so.

Q. But you think that maybe there is some difference between the two substances, is that it?

A. Yes, sir.

Q. Well, now, do you believe that the hormone produced by the ordinary thyroid has any affect on the other endocrine glands?

A. It is possible.

Q. Possible?

A. The reason, I do not wish to evade the question. The reason I answered is that knowledge on these matters is now in the state of flux, and it is difficult to answer a question yes or no, on a topic like that.

Q. The endocrine gland action is, as you say, in the state of flux, the knowledge about it is in the state of flux?

A. There are many, great advances now going on. It is too soon to properly evaluate all of them.

Q. In other words, you may have to discard some of your older ideas on the subject?

A. We may have to discard some, or change, or discard some of our ideas as to the control of one gland on another gland.

Q. You may even have to change some of your ideas as to the action of the endocrine glands?

A. You mean as to the way they produce their effect?

Q. Yes.

A. Yes, as to the way they produce their effects, yes.

Q. Well, do you believe that the pituitary has any effect on the thyroid?

A. Yes.

Q. And do you believe that the other ductless glands do?

A. Have an effect on the thyroid? The evidence is very good for pituitary, but not for the effect of other endocrine glands outside of the pituitary, thyroid.

Q. Some people believe they do have, the endocrine action, do they?

A. That is not recognized by all at the present.

Q. That is, you do not recognize it?

A. No. I am talking about the consensus of opinion in scientific literature.

Q. Well, you do not mean to say that somebody who does not subscribe to the consensus of opinion, might not be right, do you?

A. No.

Q. I take it that there are occasionally some pioneers who ascertain things that prove to be correct, that are contrary to presently accepted fashions?

A. Yes. But they are only believed to be correct when they produce scientific evidence that they are correct.

Q. Up to this time, sufficient scientific evidence has not been produced to convince you, I believe, is that right?

A. Well, as I say, I do not only take my own opinion into account, but also the consensus of scientific literature at the present time.

Q. Are you a member of the American Medical Association?

A. No.

Q. Are you licensed to practice in any State in the Union, the United States, I mean?

A. No.

Q. Are you an American citizen?

A. Yes. I might say that I belong to many scientific societies.

Q. But not to the American Medical?

A. Outside of the American Medical Association.

Q. Now, doctor, you were shown a table of weights, which I will show you now. It is stated to be average weights, are they not, Doctor?

A. Yes.

Q. Do you know of any other way of getting a so-called normal weight except by taking the average of a great number of normal individuals?

A. Well, if you mean a statistical normal, no. I know of no other way.

Q. That is the accepted way of doing the thing, isn't it?

A. Of getting a statistical normal?

Q. Yes.

A. Yes.

Q. Now, of course, you said that included a great number of people who were used to get the average, there might be some people who were, or would be some people who were both above and below this average?

A. Yes.

Q. And I understood you to say that the only way a man could tell his normal weight would be to go to a doctor, is that right?

A. What I said was that in order to get the normal weight for an individual as distinguished from a statistical normal, one would have to take into account the constitution of the individual, the body build of an individual, and so on, and somebody who was trained in such matters would have to do it.

Q. And then you would have the physician or the other trained individual's opinion as to what that particular person should weigh as an ideal weight?

A. Yes.

Q. And if this person exceeded the weights given in these average tables still the doctor might not think he was obese?

A. That is right.

Q. Is that right? But he might think he was obese himself, I take it?



A. The patient himself, yes. The patient himself might.

Q. And he might want to reduce some of that flesh, even though the doctor considered that he was not obese?

A. Yes.

Q. And he might do that by thyroid medication?

A. You mean, the patient himself might do it by thyroid medication?

Q. Yes. Take it that way first; or the doctor might prescribe it.

A. If you are thinking of the possibility, it is quite possible that some doctor might prescribe it.

Q. You are aware that a great many doctors treating obesity who prescribe thyroid?

A. One cannot class doctors as a whole any more than one can class all patients as a whole.

Q. You are aware that there are a great many doctors treating obesity with thyroid?

A. I am not aware of my own experience, as to what indication each particular doctor requires for obesity. I am only aware of the consensus of scientific and medical opinion as in the scientific literature and personal contact.

Examiner Norwood: We will take a short recess.

(Whereupon a short recess was taken.)

By Mr. Gust:

Q. Doctor, let us take the average obese person, otherwise normal except for his obesity, and we will assume that he is not sensitive as to thyroid, if we give him two grains of thyroid a day and he does not increase his intake, he will lose some weight, won't he?

A. Yes.

Q. Now, some people will lose more rapidly than others, is that true?

A. Yes.

Q. Now, is it your opinion that such an individual that we have assumed, may lose weight without any symptoms; is that right?

A. He may lose weight without any symptoms, yes, sir.

Q. Without any symptoms at all; and he may take that for sixty or ninety days without any such symptoms?

A. If you mean that the patient himself will not suffer of anything that he wishes to complain of, yes.

Q. And he will not suffer from anything that a doctor can see; either, he may not suffer from anything that the doctor can see, is that right?

A. That is right; although the probability is that, that length of dosage, that that amount is that he will be showing some increased heart rate, and some increased perspiration, perhaps some increased mental tension.

Q. Now, those are, increased heart rate, increased mental tension or nervousness, and increased perspiration, are the symptoms of too much thyroid medication, is that right?

A. Yes.

Q. And they are the initial and the cardinal symptoms, if we want to term them symptoms?

A. They are the symptoms which can be picked up most readily.

Q. Most readily and observed. Now, those are the same symptoms that you get if you increase your metabolic rate by exercise, aren't they?

A. Temporarily. They are a temporary phenomena with exercise.

Q. But if you exercise strenuously you increase your heart action, don't you?

A. Temporarily.

Q. Temporarily; and you are liable to get nervous and have tremors?

A. No.

Q. You do not?

A. Not from exercise.

Q. Not from exercise?

A. Not liable to get nervous and have tremors from exercise.

Q. You do not have tremors from exercise, Doctor.

A. It is an entirely different type of tremor, if you mean you have after fatiguing work, some muscular incoordination when the muscles are tired, yes; but that is entirely different from the sort of tremor of hyperthyroidism.

Q. All right. And you will perspire if you exercise, too?

A. Yes.

Q. Now, those are all symptoms which the patient may observe for himself?

A. He may; but many of them do not.

Q. Many of them do not. He certainly observes his nervousness?

A. He may not realize it.

Q. Well, he certainly observes the sweating?

A. He may not realize that.

Q. He may not realize that. Do you think that there are individuals who would neither observe a more active heart, or tremors, or sweating?

A. Yes, sir.

Q. Well, I take it you are talking about a pretty fine tremor in that view, aren't you?

A. No. I am talking about things which are very easily discernible to an experienced physician, and which the patient has never noticed.

Q. Now, do you say that thyroid taken in sufficiently large doses, is toxic?

A. Yes.

Q. And the evidence of the toxicity is this hurried heart action, and nervousness, and tremors, is that right?

A. No.

Q. What is the evidence of it?

A. The evidence of the toxicity is the one partly based on these physiological actions. It is the evidence, the toxicity of the thyroid is also based on the precipitation of the acute manifestations of disease in organs which were previously damaged, but were still able to maintain adequate function.

Q. Are you talking about a post mortem examination?

A. No. I am talking about a man, for instance, who has heart disease, and who takes thyroid. Formerly his heart was diseased, but it was able to maintain sufficient circulation. After he takes thyroid it may precipitate into acute failure so that it is no longer adequate to maintain an adequate circulation for health. The same applies to his liver and the same applies to his kidneys.

Q. Doctor, did you discuss this case with anybody before you came to testify, outside of the attorneys?

A. Oh, no.

Q. I do not mean that. I assume all witnesses do that; but I mean outside of that?

A. Discuss it, no.

Q. Well, should I have used any other word? Talk about it?

A. Do you mean did I mention the fact that I was going to appear as a witness, yes.

Q. To whom?

A. To some of my colleagues.

Q. Outside of discussing it with the attorneys, you did not discuss it with anybody else?

A. No.

Q. Was there any Doctor that asked you to come here?

A. Any Doctor that asked me to come here? Not to my knowledge?

Q. Who did ask you to come?

A. Mr. Hornibrook.

Mr. Gust: I think that is all.

### Re-direct Examination

By Mr. Michael:

Q. You were subpoenaed, Doctor, weren't you?

A. Yes, sir.

Q. Doctor, you were asked various things about exercise and diet. I do not want to go into those at length, but I want to ask you a question or two about those things. When you take what we might call an average normal person, who is, or thinks he is slightly overweight, not really obese; or the person who wants to become a little more sylph-like than he may be, he or she may be, and take off a reasonable amount of poundage, or a limited amount. Do you consider it inadvisable or dangerous or unsafe, say, for such a person to restrict their diet to a reasonable extent to accomplish that result, if they secure information on diet restriction, from books, or other literature on the subject?

A. No. With suitable instructions from suitable sources.

Q. Would you say the same thing in regard to ordinary, reasonable and mild reducing exercise for such a person?

A. Well, I would have to, of course, qualify my answer to, if we all understand the same thing by mild, yes.

Q. Did these patients to whom you gave thyroid to



observe its effects upon the increase in heart action show an increase in heart action?

A. Yes.

Mr. Michael: That is all.

### Re-cross Examination

By Mr. Gust:

Q. Well, Doctor, if a person got his instruction from suitable sources about thyroid, he could take that, couldn't he?

A. No.

Q. He could not?

A. No.

Q. Well, suppose he got it from you. Do you regard yourself as a suitable source?

A. I regard no one as a suitable source of information for taking a drug, which I consider dangerous, not under my or anybody else's observation.

Q. Well, if he got his instructions from you as to the taking of it, don't you think he could safely take it, properly take it?

A. If he came back for supervision regularly.

Q. Suppose you told him if he had any symptoms of nervousness, or if he would take his heart action, his pulse rate, and if he got any increased pulse rate, or if he had any sweating, or any other condition that was unusual, he should come back and see you, would you think he could then take thyroid?

A. I would not let a patient stay away that long.

Q. How long?

A. Until he got those symptoms. I would set a definite time interval which I would consider reasonable.

Q. All right. How long would that be?

A. I require patients that take thyroid to come back and see me at least every two weeks.

Q. Suppose you told him that, and said, "All right. You come back two weeks from to-day and come back earlier than that if you get any of those symptoms". Would you regard that as a safe method?

A. I would regard it as a safe method if he came back. In other words, by the time that occurred the damage might be done.

Q. You mean what, the two weeks?

A. If we are, for instance, taking a case who has some heart damage?

Q. No. I am not talking about that. I am talking about the same kind of man that this other attorney was talking about. I am talking about a man who is normal, and either thinks he is obese, or perhaps is a little obese, and you said if he got his information from proper sources, he could safely exercise. Is that right?

A. Yes.

Q. And you also said if he got his information from the proper sources he could probably diet without much danger?

A. But we talked about mild diet, and mild exercise.

Q. Mild diet and mild exercise. If he did both of them mildly, why he probably would not suffer any injury; is that right? That is the way I understood your testimony?

A. Yes.

Q. Well, what I am trying to say is, if we assume that same individual, if he got his thyroid information from suitable sources, he could take thyroid safely, couldn't he?

A. Well, the difference —

Q. Could he or could not he?

A. I can not answer that by yes or no. I would want to qualify it.

Q. You would not want to answer that yes or no?

A. No.

Q. Well, could I put something else in the question? Is there anything about — — you answered it yes, about diet and exercise. Now, is there anything in my question that I omit, that the other attorney did not?

A. Yes. The difference is that you are dealing with thyroid, and they are dealing with diet and exercise, and the results are different and the substance you are dealing with is different; and I would like to qualify my answer in order to be able to answer accurately.

Q. Well, I think, Doctor, we will assume then that that individual got his instructions from you on taking the thyroid?

A. Yes.

Q. As a suitable source?

A. Yes.

Q. Don't you think he can take it safely?

A. For a period of two weeks, if he takes exactly what I told him, yes.

Q. And if he comes back at the end of two weeks, and told you he has suffered no inconvenience from thyroid, and he is very much pleased, feels better, and has lost some weight, will you tell him to go on with the treatments?

A. After examining him, yes.

Q. Now, what examination do you have to give him?

A. I would take his pulse rate; his blood pressure. I would observe the condition of his skin, whether there was undue moisture there, I would, in talking to him try to test what nervous tension he was under. I would take the tremor of his fingers, observe whether there were a tre-

mor that had not formerly been there. I might even in certain cases, where I become suspicious from the results of other tests, examine certain eye signs which are known to be indicative of thyroid action.

Q. But you would not do that unless you got suspicious of these other symptoms, is that right?

A. I would do the simple straight forward things, first, and go into more detail if they are indicated.

Q. And the simple straight forward things are to take his pulse rate, observe whether he has any tremors or not, and observe whether he is sweating, or not?

A. Take his blood pressure, and make a judgment of his nervous condition, nervous state, tension.

Q. And you don't think the patient can do that for himself?

A. Well, I stated it as a matter of fact, that many patients come in not only to me but to many doctors, and have not recognized those things, which are perfectly obvious to the doctor.

Q. Some patients can not, but don't you think some of them can?

A. Well, I would not deny that some of them might be able to.

Q. On the other hand, if he wants to mark out any strenuous exercise or strenuous diet, do you think as distinguished from mild, do you think that that is unsafe unless he goes to the doctor?

A. Right.

Mr. Gust: All right, that is all.

## Re-direct Examination

By Mr. Michael:

Q. Now, this average normal person that was covered by the question of the attorney for Respondent, and about which you were asked in regard to giving dosage of desiccated thyroid for reducing, would you give desiccated thyroid in such a case?

A. No.

Mr. Michael: That is all.

By Mr. Gust:

Q. You know that lots of doctors would, don't you, Doctor?

A. Well, I have no way of knowing that.

Mr. Gust: All right.

(Witness excused.)

DOCTOR JOSEPH L. MILLER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

## Direct Examination

By Mr. Michael:

Q. What is your name, please?

A. Doctor Joseph L. Miller.

Q. Doctor Miller, are you a practicing physician?

A. Yes, sir.

Q. Where do you live?

A. I live at 5315 Greenwood Avenue, Hyde Park, Chicago, Illinois.

Q. And do you maintain an office for general practice?



A. Yes, sir.

Q. Where is your office located?

A. 122 South Michigan Boulevard.

Q. How long have you practiced medicine, Doctor?

A. Forty years.

Q. Do you hold any official positions in relation to your medical practice?

A. You mean Teaching Positions?

Q. Anything of that kind?

A. Yes, sir.

Q. What are those?

A. Well, I am Chemical Professor of Medicine at the University of Chicago Clinics.

Q. How long have you held that position?

A. About nine years.

Q. State briefly your educational training and your experience that have qualified you for the practice of your profession, and for the position you hold?

A. I graduated from the University of Michigan in Arts, took all but my last year of medicine there, then I came to Chicago, Northwestern University for my last year.

Then I had an internship of a year and a half at Mercy Hospital, Chicago; and then I assisted with Doctor Billings for three years; and during that period I taught bacteriology at Northwestern University as well as assisting him.

Then I was Vienna, 1900 or 1899, I was in Vienna for about a year and two or three months. I came back once in the interval, but went back again within a few months.

Then I taught at Rush Medical College from the time I came from Europe, and was finally Professor of Medicine there, up to the time that I took the position at the University of Chicago.

I spent three months in Heidelberg, in 1907, studying Medicine.

Q. During your stays in Vienna, were you pursuing medicine, the study of medicine there?

A. Entirely.

Q. How long were you studying there altogether?

A. About a year and two months. I was for a short time in Munich.

Q. Has your study and experience qualified you to give testimony and opinions as to the effects and use of desiccated thyroid on the human body?

A. Well, I have been in practice forty years.

Q. In your teaching positions and work in that connection, has it included a study of, or observation or experimentation in the use and effects of desiccated thyroid?

A. Clinical experience.

Q. You have had actual clinical experience with the use and effects of desiccated thyroid?

A. Yes, sir.

Q. Have you also had or observed experimental work?

A. I have read a great deal of that experimental work.

Q. Now, would any testimony that you might give at this hearing in regard to the effects or the use of desiccated thyroid be based in part at least on your observation and knowledge that you have gained from experimental work with desiccated thyroid?

A. It would be based upon my clinical experience plus what I have read in the literature.

Q. About experimental work?

A. Yes.

Q. And other things; but it includes your knowledge that you have acquired in regard to experimental work?

A. Yes, sir.

Q. In your opinion, Doctor, is desiccated thyroid a proper treatment for all cases of obesity, or excess fat?

A. No, sir.

Q. Is it a safe treatment in such cases?

A. You mean all cases?

Q. In all cases?

A. It is not.

Q. In your opinion, Doctor, would a medicine containing one half of a grain of desiccated thyroid per dose, and given three times a day after meals, and again before retiring for a period of from sixty to ninety days, constitute a proper treatment for obesity or excess weight generally?

A. No, sir. It would not.

Q. Would it be a safe treatment?

A. I should say no, sir, provided the patient, we are assuming that these patients were not examined before.

Q. Well, I am speaking about generally for treatment of obesity, or obese patients or overweight patients as a class?

A. It would be unsafe unless the patient was being seen at rather frequent intervals.

Q. Would you call such a treatment a scientific treatment?

A. Not thyroid.

Q. For self-medication?

A. No, sir.

Q. Doctor Miller, I will hand you a copy of the formula of Marmola, which formerly has been given in evidence in this case, and the copy which I hand you is agreed upon by counsel as being a copy of the formula given in testimony, and ask you to examine it, and state whether in your opinion that medicine constitutes a proper treat-

ment for obesity generally, taken one tablet after each meal and one tablet before retiring, for a period of from sixty to ninety days?

A. I would not consider that a safe treatment.

Q. Or a proper treatment?

A. Well, if it were not safe it would not be proper.

Q. Would you consider that such a formula were indicated in the treatment of obesity generally?

A. Well, may I ask a question? Do you mean all this stuff in here?

Q. Yes.

A. Well, that is all inactive except the thyroid, and a little extract of cascara. I should say that I would not consider anything scientific unless it was first, or I say, the patient was first put on a diet, see, and only in case the patient adhered to his diet and continued it for a considerable period of time. And then after a certain period of time, while he was still being weighed, he reached a point where he would, his loss in weight ceased, in those cases I at times give thyroid, and in addition to their diet, but never give it as an initial treatment.

Q. Generally speaking, would you consider thyroid a proper treatment for obesity in cases of exogenous obesity?

A. Oh, I would not, if I understand you properly. You mean thyroid alone?

Q. Thyroid alone, yes, sir.

A. No, sir.

Q. Do you use thyroid in treating cases of obesity, that you have ascertained to be due to deficiency of thyroid secretion?

A. Yes, sir.

Q. Do you consider it proper in such cases?

A. Due to deficient thyroid secretion, the most that I see are those who have been operated upon, post operative myxedema.

Q. Would you consider that a patient suffering from obesity due to hypothyroidism, do you consider that such a patient could safely treat himself with thyroid by self-medication?

A. No, sir.

Q. What do you call the special form of obesity that is due to hypothyroidism?

A. Myxedema.

Q. Is that one of the worst forms of obesity?

A. Well, it is entirely different from any other form of obesity. It is obesity plus a lot of other things.

Q. Well, in other words, it is a very bad physical condition?

A. A very bad physical condition.

Q. And mental?

A. And mental.

Q. And you would consider thyroid treatment to be proper in such cases?

A. Yes, sir.

Q. And you use it?

A. Yes, sir.

Q. Are those cases comparatively rare?

A. I think they are rare in this section of the country.

Q. But do they compose a very, a very small percentage of obesity cases?

A. Very small, indeed.

Q. In such cases what dosage per day of thyroid do you give?

A. You mean myxedema?

Q. Yes.



A. Well, I might just mention this, that the Massachusetts General in Boston, where they have had more experience than any place else, they find that from one to two grains is all that is necessary to bring a patient with myxedema, and whose basal rate, we will say is minus thirty, up to normal. They state that they rarely exceed two grains a day.

Q. And that maximum is the same dosage per day in the question I just asked you about the formula of Marmola?

Mr. Gust: Oh, I object to that. The formula speaks for itself.

Examiner Norwood: What is the question?

(Question read by the reporter.)

Examiner Norwood: I think that it really does speak for itself. The objection is sustained.

By Mr. Michael:

Q. Do you think that desiccated thyroid is such a drug or product that should be used for self-medication?

A. I do not.

Q. Do you consider, Doctor, that thyroid is a proper medication to be used for what might be termed the average person afflicted with obesity, or excess weight?

A. I understand, used alone?

Q. Yes.

A. No, sir. I consider it is not. It is not right.

Q. Would you use thyroid extract or desiccated thyroid in any case except the cases of hypothyroidism, or certain exceptional cases?

A. I use it in exceptional cases.

Q. But would you use it in any other except certain exceptional cases, and hypothyroidism?

Mr. Gust: If the Court please, he has already testified he uses it. It is repetition.

Examiner Norwood: I think he may repeat that, if he wishes to.

The Witness: Well, if I were to speak about exceptional cases, which I haven't mentioned before, am I permitted to mention—

Examiner Norwood: Go ahead.

The Witness: You take a patient who is very obese, and who has a very high blood pressure, a terrible combination on his heart. Such a patient is put on a diet, and if you get his blood pressure down to a certain point, on diet, and can not get it further, then you give him thyroid because you think it is so important that you get that man's weight down to normal.

By Mr. Michael:

Q. But that would be a very exceptional and serious case?

A. Yes, those cases are not so uncommon, obesity with high blood pressure.

Q. But such treatment—

Mr. Gust: The Doctor does not need to be led, if the Court please. It starts leading, that is all.

By Mr. Michael:

Q. Would it be safe for an obese person with high blood pressure, such as you described, to take thyroid by self medication?

A. I should consider he would be an unusually dangerous type.

Mr. Michael: That is all.

### Cross-Examination

By Mr. Gust:

Q. I take it, Doctor, that thyroid is a specific for myxedema, is it?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And do you use yourself more than two grains in myxedema?

A. The myxedema I have seen have all been post operative, which are different than the others.

Q. What doses do you use in those?

A. Well, one to two grains.

Q. One to two grains. Now, you said that you did not think that thyroid used alone was proper for the general treatment of obesity?

A. Yes, sir, that is right.

Q. When you said used alone, what did you have in mind that he had used with it?

A. That is first, an effort should be made to bring down the patient's weight with diet, with proper exercises, and—well, I mentioned those two things first.

Q. In other words, what you want to say is you first try to reduce him with diet?

A. Diet and exercise.

Q. Diet and exercise; and if you find a man who does not reduce beyond a certain point, that way, then you start thyroid medication, is that right?

A. Start very moderate thyroid medication.

Q. Start thyroid medication at that point?

A. Yes.

Q. But you do not consider it before you have failed to reduce him with diet and exercise?

A. Failed to reduce him. You can reduce all of them with diet and exercise.

Q. Some, but failed to reduce him enough; is that right?

A. Yes. If I am sure that they are dieting. I never.

give a patient thyroid whom I suspect is not following my diet.

Q. But if you think he is following your diet rules, and your exercise rules, and still you do not get enough reduction, you then start with thyroid?

A. Start with thyroid.

Q. Now, I take it, Doctor, that you do not think any drugs ought to be self-administered, do you?

A. Oh, I think these ordinary cold remedies, these herbs are perfectly safe; spearmint, peppermint, all that stuff.

Q. Well, when you get out of that class, you think they ought to come to a physician, do you?

A. Well, I tell you we have a tremendous number of inert drugs, just as that paper there shows. I mean drugs that are inert, and they are used in a lot in those popular remedies, and I do not think they do the patient any harm. I know they do not do him any good. It is psychic.

Q. If they are inert, they do not do any harm?

A. Yes.

By Examiner Norwood:

Q. Can they take Alka Seltzer?

A. How is that?

Q. Can they take Alka Seltzer?

A. I do not know what it is.

Mr. Gust: I think that is all.

Mr. Michael: That is all.

(Witness excused.)

Examiner Norwood: The hearing is adjourned to meet at ten o'clock tomorrow morning, Wednesday, January 8th, 1936.

(Whereupon, at 5:40 o'clock p. m., January 7th, 1936, the hearing in the above entitled matter was adjourned.)

## PROCEEDINGS

(Continued Jan. 8, 1936)

Examiner Norwood: The hearing will come to order.

J. J. ENGLISH was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

## Direct Examination

By Mr. Michael:

Q. What is your name?

A. J. J. English.

Q. Mr. English, what is your business?

A. I am buyer in a wholesale drug house.

Q. What is the name of your concern?

A. The Huniston-Keeling Company.

Q. Where is that located?

A. 312 West Randolph Street, Chicago, Illinois.

Q. Now, what is the general nature of that business?

A. Wholesale druggists.

Q. What kind of products generally does this company handle?

A. Well, they handle chemicals, pharmaceuticals, patent medicines, sundries, rubber goods.

Q. General drug line, such as sold in retail drug stores.

A. Yes.

Q. Now, is your company manufacturing chemists or pharmacists?

A. No, we are nothing more than service jobbers, service wholesalers.



Q. Now, through what territory does your company sell?

A. Well, Illinois and Michigan, part of Wisconsin, Indiana, and we have a few customers in Iowa; the surrounding States, you know.

Q. Now, what is your method of business? Do you ship the goods that are ordered from you directly from your place of business?

A. To the Retail drug stores.

Q. To the buyers, the retail drug stores who buy the goods?

A. That is right, yes.

Q. In other words you buy the goods first from the manufacturer, and then resell it to the retailers?

A. That is right.

Q. And ship the goods when bought by your customers from your place of business here in Chicago?

A. Yes, sir.

Q. Now, among the pharmaceutical and the so-called patent medicines that are handled by your company, are there those which are adapted to or used for or sold for the reduction of excess weight, or used in connection therewith?

A. Yes.

Q. Does your company handle the product known as Marmola, made by the Raladam Company of Detroit, Michigan?

A. Yes, we do.

Q. Is it true that your company as well as other drug concerns of the kind, handle those products for which there is a demand?

A. Yes, it is.

Q. Do you know Marmola as a product that is sold for the purpose of effecting weight reduction?

A. Yes.

Q. Does your company handle the product known as Jad Salts?

A. Yes, we do.

Q. Who makes that?

A. Wyeth Chemical Company.

Q. Where are they located?

A. Detroit, Michigan, now.

Q. Do you know, as a matter of general knowledge, whether the Jad Salts is sold for or used in connection with weight reducing treatment?

Mr. Gust: I object to that, if the Court please, the witness not showing any special knowledge of therapeutic claims made by the Jad Salt Company.

Examiner Norwood: I do not see any use of using the words matter of general knowledge, when this wholesaler is selling these goods for definite purposes, and he has definite knowledge of it.

Mr. Michael: This is the buyer, understand.

Examiner Norwood: Well, he buys it for certain purposes and he knows that he can sell it. Not as a matter of general knowledge.

By Mr. Michael:

Q. Well, as a matter of your own contact with the business?

Examiner Norwood: The objection is sustained for the present form.

Mr. Michael: All right. I will change the form of it.

By Mr. Michael:

Q. Mr. English, have you become acquainted with the fact that Jad Salts is sold to be used in connection with a reducing treatment?

A. I have, yes.

Q. Will you state the general nature of that reducing

treatment, and the use of it, Jad Salts in connection therewith?

A. Well, I can not state the treatment, only their salesman, their representative told me—

Mr. Gust: Well, I object to this, as being hearsay.

By Mr. Michael:

Q. Not what he said, but what you have become familiar with in your business.

Mr. Gust: If the Court please, I think this is purely hearsay. There is no attempt to show how he obtained this knowledge, and the witness has indicated that he obtained it from conversations with other people. I think that is hearsay.

Examiner Norwood: This is information that is passed in the trade, which the buyer verifies, and the buyer himself necessarily must know the sales conditions, and usually is a super salesman himself.

Now, if this is such a witness and he has the knowledge, and he can testify as to his own knowledge, he may do so.

Mr. Michael: Mr. Examiner, that was my theory, but I do not think it would be proper perhaps for him to tell the substance of the conversation.

Examiner Norwood: Well, you can go on and answer that question, if you can answer it from your own knowledge as to what this is sold for, and how it is supposed to be used.

The Witness: Well, I can not tell how it is going to be used. I could not tell that.

By Mr. Michael:

Q. Have you learned, Mr. English, from your contacts with the trade in any connection, that Jad Salts when it is used for the purpose of or in connection with reducing, is used in connection with or as an adjunct to a diet?

Mr. Gust: That is objected to for the same reason.

Examiner Norwood: I think you are getting into technical grounds. The objection is sustained.

By Mr. Michael:

Q. From your purchases of Jad Salts for your company and your connection with the business, have you learned whether or not Jad Salts is sold with a diet list when used for reducing purposes, or in connection with it?

Mr. Gust: I object to that.

Examiner Norwood: The objection is overruled.

The Witness: I do not know whether it is sold with a diet list or not. No, I do not know that.

By Mr. Michael:

Q. Do you know the general representations of the company for its use in that regard?

Mr. Gust: I object to that, if the Court please, not being the proper way to prove the representations of the company.

Examiner Norwood: Read the question.

(Question read by the reporter.)

Examiner Norwood: Sustained.

Mr. Michael: That is just yes or no, if he knows.

Examiner Norwood: Well, if it is objectionable, whether he knows or not is irrelevant.

By Mr. Michael:

Q. Mr. English, in your connection with the Wyeth Chemical Company in the sale of Jad Salts, have you learned whether they publish a special booklet on diet when persons take the Jad Salts in connection with the diet for reducing?

A. I never knew about, about the diet.

Q. Now, do you handle the product known as Van Nay?

A. Yes.

Q. Who makes Van Nay?

A. That is the Bio Medico, New York. It says on that list, Bio Medico. I think they are out of business.

Q. Where were they located?

A. New York.

Q. Is their product still on sale?

A. We have not sold a package of it in months. The stock remains the same.

Q. But it has been on sale within the last year? You still have stock?

A. We still have some in stock.

By Mr. Gust:

Q. Did I understand you to say they were out of business?

A. I think so. I could not say for sure. We have not sold a package to a retailer in months, over six months.

By Mr. Michael:

Q. But you still have a supply on hand?

A. I still have a little of it, yes.

Q. Is that sold or used for reducing purposes?

Mr. Gust: I object to that, if the Court please. I think the material itself is the best evidence, of its therapeutic claims, or their advertising.

Examiner Norwood: He knows what he buys it and sells it for. There is no best evidence rule on that. The objection is overruled.

The Witness: Yes it is.

Mr. Gust: Sold for what, did he say?

(Question read by the reporter.)

By Mr. Michael:

Q. Do you handle a product known as Dinitrophenol soda capsules?

A. Yes, we have that.

Q. Who makes that?



A. Well, there are various manufacturers, we have got Squibbs, Mallards, G. D. Searles, Midwest.

Q. Where is Squibbs located?

A. 111 North Canal.

Q. Chicago?

A. Chicago, Illinois.

Q. Is that their main office?

A. That is where we get our merchandise. They have places all over the country.

Q. That is E. R. Squibbs & Son?

A. That is E. R. Squibbs & Son, yes.

Q. Is that product sold or used for, or bought for reducing purposes?

Mr. Gust: I object to that as the witness has not been qualified to answer that question.

Examiner Norwood: He is qualified because he buys and sells this item.

Mr. Michael: Well, he sells it to the retail druggist. He does not propose to know what the retail druggist sells it for.

Examiner Norwood: As I understand it, this question is not going to prove what these medicines actually do, but at this time he is showing what it is being sold in the trade for as bearing on the question of competition.

The objection is overruled.

The Witness: Yes, that is what it is sold for.

By Mr. Michael:

Q. Does your company handle a product known as Doctor McCaskey's RX Tablets?

A. Yes, we do.

Q. Who makes that?

A. That is Midwest, New York.

By Mr. Gust:

Q. What is it, Midwest Chemical?

By Mr. Michael:

Q. Is that the Dispensary Supply Company?

A. The Dispensary, that is right. The Dispensary Supply.

By Mr. Gust:

Q. Isn't it the Midwest Medical Supply?

A. There is a Midwest Medical Supply.

Q. This is different?

A. This is different, yes.

By Mr. Michael:

Q. Is that New York City?

A. New York City, yes.

Q. Is that sold or bought or used for reducing purposes?

Mr. Gust: Same objection.

Examiner Norwood: The objection is overruled.

The Witness: Yes.

By Mr. Michael:

Q. Does your company handle a product known as Reducoids?

A. Yes, we do.

Q. Who makes that?

A. Scientific Laboratories of America, Incorporated.

Q. Where are they located?

A. San Francisco.

Q. California?

A. California.

Q. Are Reducoids sold for or used for or bought for reducing purposes?

A. Yes, they are.

Q. Does your company handle a product known as Slendrets?

A. We do. Well, that item just came in. They sent a

quarter of a dozen on consignment. We just got that here, oh, in the last month.

Q. Who makes that?

A. That is the Scientific.

Q. Medical Products, Incorporated?

A. Yes, you got it down there. I haven't even made a memorandum in the stock book yet.

Q. Scientific Medicinal Products Company, Inc?

A. I have not got the invoice for it even.

Q. Where are they located?

A. That is San Francisco.

Q. California?

A. Yes.

Q. Is that a product that is sold for or used for or bought for reducing purposes?

A. It is.

Q. Now, are all these that I have mentioned in my previous questions, products that are sometimes called patent medicines?

A. Some are, yes.

Q. Well, I mean the ones that I have named so far?

A. Well, the Dinitrophenol is supposed to be among the ethical items, sold on Doctor's prescription.

Q. State what kind of products all of them are, but Dinitrophenol, that I mentioned?

A. Yes.

Q. Are all patent medicines?

A. Yes.

Q. And they are on sale in package form, as I understand, like other patent medicines?

A. Yes.

Q. To the general purchasing public?

A. That is right.

By Examiner Norwood:

Q. And most of them advertised?

A. Yes, sir.

By Mr. Michael:

Q. Now, Dinitrophenol, what kind of item is that?

A. That is for fat reducing, chemical.

Q. And is that a patent medicine, or how would you classify it?

A. That was supposed to be an ethical item, sold on Doctor's prescription.

Q. What do you mean by ethical item?

A. Sold on Doctor's prescription.

Q. It is handled in the prescription cases of drug stores?

A. That is right, yes.

Q. And bought by the purchasing public on Doctor's prescriptions?

A. That is right, yes.

Q. Can it also be bought by the purchasing public, the laymen on call without a prescription?

A. Yes, there is a lot got to know about it.

Q. Beg pardon?

A. There is a lot of the laity got to know about Dinitrophenol, went in, tried to purchase it over the counter. I suppose they have, as far as I know. In fact, I have had them come in to me.

Q. And they can purchase that, and they do?

A. Yes. There is no reason why they can not. It is not labeled poison.

Q. And they do so purchase these things, they do so purchase it?

A. So far as I know. I do not know whether all retailers will do it, but there are cases where they have.

Q. Now, what other companies can you mention that

manufacture and sell Dinitrophenol tablets that you handle?

A. Well, there is the Midwest Medical Supply Company. They are in Chicago.

Q. Do you handle their product?

A. Yes, we do.

Q. That is a similar product to the Squibbs product?

A. Yes.

Q. And any other Dinitrophenol tablets that you handle?

A. I gave you Mallard; A. E. Mallard, of Detroit, Michigan.

Q. And that is a similar product to the other two?

A. Yes, it is.

Q. The G. D. Searle & Company make a tablet of that kind?

A. Yes.

Q. Where are they located?

A. They are in Chicago.

Q. Do you handle their products too?

A. I do.

By Mr. Gust:

Q. What is that name?

A. G. D. Searle & Company.

By Mr. Michael:

Q. Are those Dinitrophenol tablets of such a character that the volume of sale is considerable?

A. Well, we do not sell as much of them, the sale has fell away considerable of the Dinitrophenol. We might average about ten or twelve a month now.

Q. What do you mean, ten or twelve what?

A. Bottles, that is a hundred in a bottle.

Q. Oh, the sale was formerly larger?



A. Yes.

Q. Did your company handle a product known as Nitra Phen?

A. Yes, we do.

Q. Capsulettes?

A. Capsulettes, that is right.

Q. Who makes that?

A. The A. E. Mallard, Detroit, Michigan.

Q. Is that a pharmaceutical preparation also, sold from prescription cases?

A. It is, yes.

Q. Can that be bought by the general public, a layman on call?

A. Yes, they can, go in and ask for it, yes.

Q. And also sold to the general public when they present a prescription for it?

A. Yes.

Q. Your firm handles that product?

A. We do, yes.

Q. What is that product sold or used for, or bought for?

A. That is a fat reducing, obesity.

Q. And are all of the Dinitrophenol tablets that you have mentioned, of different manufacture, or are those also sold for or bought for or used for reducing purposes?

A. Yes.

Q. Does your company handle a product known as Phytroids?

A. Yes.

Q. Who makes that product?

A. Cathcart & Cathcart.

Q. Where are they located?

A. Newburg, New York, they are the same as the Kells

and Company. The label is Cathcart and Cathcart, and the firm name is the Kells Company. It is one and the same outfit.

Q. How do you spell that Kells?

A. K-e-l-l-s.

Q. Now, what is that product sold for or bought for or used for?

A. That is for obesity, fat reducing.

Q. Is that a pharmaceutical preparation?

A. Well, it is intended for it, yes.

Q. Is that sold from prescription cases or sold from a group of patent medicines?

A. Well, prescription.

Q. Can that also be bought by the layman on request?

A. It can, yes.

Q. And it is also bought by the layman when he presents a prescription for it?

A. Yes, either way.

Q. Now, all of these various items that I have mentioned in my previous questions, do you know, from your contacts with the trade, and your experience in the business, whether they are articles of general sale to a greater or less extent throughout the United States?

Mr. Gust: I object to that, he not having shown he had any knowledge on that subject.

Examiner Norwood: Read the question.

(Question read by the reporter.)

Examiner Norwood: The objection is overruled now. He asked you to testify from your own knowledge on those matters.

The Witness: Yes, there are several of them, not all of them. I could not testify as to all of them.

By Mr. Michael:

Q. Are all of them of general sale to your company's customers in the various States where you do business?

A. Yes.

Q. And you ship them from your place of business here in Chicago to the various States where your customers are in business?

A. That is right, yes.

By Examiner Norwood:

Q. How many States does that cover?

A. About five.

Q. What are those?

A. Well, there is Illinois, Indiana, Michigan, Wisconsin, Iowa.

By Mr. Michael:

Q. Does your company handle various makes of thyroid products, desiccated thyroid or thyroid extract?

A. Yes, sir, we do.

Q. What makes of those products does your company handle?

A. Well, we have Eli Lilly & Company, Armour & Company, and Wilson and Company.

Q. Now, state where each of these companies are located?

A. Eli Lilly & Company is Indianapolis, Indiana; and Armour and Wilson are Chicago.

Q. Now, are those pharmaceutical preparations or patent medicines?

A. Pharmaceutical preparations.

Q. Can those products be bought by the layman on request?

A. Yes.

Q. Are they also bought by the purchasing public on the presentation of a prescription calling for it?

A. Yes.

Q. And do you sell these thyroid products to your customers located in the various States which you have mentioned? -

A. That is right, yes.

Q. And ship them from Chicago to them when sold?

A. That is right.

Mr. Michael: I believe that is all.

### Cross Examination

By Mr. Gust:

Q. Mr. English, you have told us that these Dinitrophenol soda capsules made by Squibbs & Sons were so-called ethical or pharmaceutical preparation?

A. Yes.

Q. As distinguished from a proprietary medicine, is that right?

A. Yes.

Q. There is a well marked distinction in the drug trade between the so-called ethical products and the so-called proprietary products, isn't there?

A. Yes, there is.

Q. There are two methods of marketing medical preparations, one of them is the so-called ethical method and the other is the proprietary method; isn't that right?

A. That is right.

Q. And the people who are engaged in the manufacture of the so-called ethical products, they advertise it only to the medical profession; is that right?

A. Yes.

Q. And it is sold in the beginning only on Doctor's prescriptions; is that right?

A. Yes, that is right.

Q. Of course, I understand, that you tell us that if a layman finds out from the Doctor what it is the Doctor is giving him, then he can go back to the drug store and buy it for himself, unless it is of a narcotic list, or of a poison list, is that right?

A. Yes, sure.

Q. That is, that holds true of all these so-called ethical products?

A. Yes.

Q. But they are sold to and marked, they are advertised to the medical profession, aren't they?

A. Yes, that is right.

Q. Now, on the other hands, the proprietary products are advertised to the general public; is that right?

A. Yes.

Q. And they are sold to be taken without a Doctor's advice or prescription; isn't that right?

A. That is right.

Q. Now, I think you told us that all of these Dinitrophenol preparations were ethical or pharmaceutical preparations; is that right?

A. Yes.

Q. That included all the, I was not sure about Nitrophen.

A. That is what it is.

Q. That is ethical or pharmaceutical product?

A. Yes.

Q. That is also true of Phytroids, that is ethical or pharmaceutical?

A. Yes.

Q. Now, with respect to these others that you have mentioned, the proprietaries, Slendrets, Reducoids, and



Doctor McCasky's RX and Van Nay, they are also advertised to be sold to the public without a Doctor's prescription or instruction or advice, are they?

A. Yes, that was their procedure, yes.

Q. That is their procedure?

A. Yes.

Q. They are sold by you to the druggist, and he in turn dispenses them to the general public, who come in and ask for them?

A. Yes.

Q. And they are advertised to the general public, is that it?

A. That is it.

Q. Do you know of any patent medicine or proprietary medicine that is sold to be taken only on Doctor's prescription, or under his direction and advice?

A. No, I do not, a patent medicine.

Q. Do you know of any medicine, proprietary medicine?

A. No.

Q. They are all sold to the public to be taken by the public without reference to Doctors, aren't they?

A. Well, patent medicine as a rule, my understanding of them, is they have directions on all packages, and the consumer can take it himself without the advice of the physician.

A. That is right.

Mr. Gust: That is all.

Mr. Michael: That is all.

By Examiner Norwood:

Q. Do you consider this desiccated thyroid that you sell, is that an ethical product?

A. It is supposed to be an ethical product.

Q. That you sell to the druggist to be given out on prescription?

A. That is right.

Q. Do you have any other proprietaries that have this thyroid in it?

A. Well, you take a patent medicine, we do not know the ingredients of the patent medicines. As a rule, the pharmaceuticals generally prints the formula on.

By Mr. Gust:

Q. I meant to cover this, this Eli Lilly and Armour and Wilson thyroid extract and thyroid tablets, are ethical products, aren't they?

A. They are supposed to be.

Q. And are advertised only to Doctors?

A. That is right.

Mr. Gust: That is all.

Mr. Michael: That is all.

(The witness was excused.)

Examiner Norwood: We will take a short recess.

(Whereupon a short recess was taken.)

Examiner Norwood: Proceed gentlemen.

E. J. FAULHABER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

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Direct Examination

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By ~~Mr.~~ Michael:

Q. State your name, please?

A. E. J. Faulhaber.

Q. Mr. Faulhaber, what is your business?

A. We are in the wholesale drug business.

Q. What is the name of your company?

A. Van Schaack Mutual, Incorporated.

Q. Where is that company located?

A. 310 West Washington Street.

Q. What city?

A. Chicago.

Q. Illinois?

A. Illinois.

Q. In what general business is your company engaged?

A. Well, drugs, chemicals, oils, sundries, pharmaceuticals, general wholesale drugs.

Q. Do you manufacture any chemicals or pharmaceuticals?

A. We do not.

Q. You buy from the manufacturers?

A. We buy from the manufacturers.

Q. To what class of trade do you sell?

A. The retail drug trade.

Q. What is the territory of the business of your company?

A. Well, six States.

Q. Name them, please?

A. Illinois, Wisconsin, Michigan, Indiana, Iowa and Minnesota.

Q. And do you stock goods at your establishment?

A. Yes, sir.

Q. Now, is your method of sale to buy all goods and stock them, and then ship them from your place of business in Chicago to your customers, where they are located in the various states where you sell?

A. Yes, sir.

Q. Among the pharmaceuticals and patent preparations or patent medicines sold by you, by your company,

are there those items which are sold for or used for or bought for reducing purposes?

A. We have such items.

Q. Do you have both the so-called pharmaceutical preparations and the so-called patent medicines in that line?

A. Yes, sir.

Q. And are these various items sold throughout your territory?

A. Yes, sir.

Q. Does your company handle a preparation such as I have last described known as Nitra Phen Fifties?

A. Yes, we have it.

Q. Who makes that?

A. A. E. Mallard, Detroit.

Q. Michigan?

A. Michigan.

Q. Is that sold for or bought for or used for reducing purposes?

A. It is.

Q. Is that company now in existence?

A. Yes, sir.

Q. Does your company handle Marmola tablets manufactured by the Raladam Company, of Detroit, Michigan?

A. Yes, sir.

Q. Does your company handle a product of that type, known as the Arbolone tablet?

A. We carry it, yes, sir.

Q. Who makes that product?

A. The Arbolone Company, of Dayton, Ohio.

Q. Is that product bought for or used for or sold for reducing purposes?

A. It is.

Q. Does your company handle a product known as Phytoroids?

A. Phytoroids, yes, sir.

Q. Is that sold for or used for or bought for reducing purposes?

A.. Yes, sir.

Mr. Gust: I have the same objections to this line of testimony.

Examiner Norwood: Yes.

Mr. Gust: I think the proper way to prove the therapeutic claims of these various people would be to introduce the product.

Examiner Norwood: It will be understood you have objected to all similar questions, and the ruling will be the same as it has been. The objection is overruled in this case.

Mr. Michael: I might suggest that the preparations are made, the products might be bought for or used for that purpose—

Examiner Norwood: I take it that these dealers know the demand that they are devoting their time to, and making an effort to supply that demand.

By Mr. Michael:

Q. Who makes that product?

A. We bought it from the Kells Company, and the name of Cathcart and Cathcart is on the package. Cathcart, as I understand is the owner of Kells Company. I happen to know the gentleman.

Q. They are related corporations?

A. Yes, sir.

Q. Where are they located?

A. Newburg, New York.



Q. Do you know whether one is a sales corporation and the other is a manufacturing corporation?

A. I do not know. The Kells Company was considered brokers, drug brokers, carrying hundreds of items. I understand they own this particular item. They own several items that they list.

Q. But as I understand your answer, it comes labeled as being made by the Cathcart and Cathcart?

A. Well, their name appears on the label, and I understand—well, when you buy Phytoroides you have to buy it from the Kells Company. Cathcart and Cathcart do not bill anything, they do not sell it. I imagine that they are the manufacturer.

Q. But you do know the Kells Company have the Sales Agency for the product?

A. Yes, sir.

Q. Where are those companies located?

A. Newburg, New York.

Q. Are those companies in existence?

A. Yes, sir.

Q. Does your company handle a product known as Van Noy tablets?

A. Yes, sir.

Q. Who makes that product?

A. Bio Medico, Incorporated.

Q. Where are they located?

A. New York City.

Q. Is this such a product as is sold for and bought for reducing purposes?

A. Yes, sir.

Q. Is that company in existence now?

A. I am not sure. We have not bought any since last October, and they are not active in this territory at all.

Q. It was in existence then?

A. It was October 4th, 1935.

Q. Does your company still have a stock of the goods?

A. Yes, sir.

Q. Still selling it?

A. I did not say that. It is very slow.

Q. Well, you have it for sale?

A. We have it for sale.

Q. Does your company handle a product known as Reducoids?

A. We do.

Q. Who makes that?

A. The Scientific Laboratories of America, San Francisco.

Q. California?

A. Yes, sir.

Q. Is that sold for and bought for reducing purposes?

A. Yes, sir.

Q. Is that company in existence?

A. Yes, sir.

Q. Does your company handle a product known as Slendrets?

A. Yes, sir.

Q. Who makes that?

A. Scientific Medicinal Products, San Francisco, California.

Q. Is that product sold for and bought for reducing purposes?

A. It is.

Q. Do you know whether that company is in existence?

A. They are, yes, sir.

Q. Does your company handle a product known as Germania Herb Tea Number Fourteen?

A. Yes, sir.

Q. Who makes that?

A. The Drug Trade Products, Incorporated.

Q. Where are they located?

A. South Wells Street, Chicago, Illinois.

Q. Is that product sold for or used for reducing purposes, or in connection with reduction?

Mr. Gust: Well, I object to that. It is more specific because I think their therapeutic claims are the best evidence. Those things are all available to the Government, if the Court please. His last witness had with him all these products, and the Government did not see fit to introduce them.

Examiner Norwood: The objection is overruled.

By Mr. Michael:

Q. What is your answer to that?

A. It is used for reducing, fat reducing.

Q. Well, is the Drug Trade Products, Incorporated, that you have just mentioned, now in existence?

A. They are.

Q. And that product is being now marketed?

A. Oh, yes, sir.

Q. Does your company handle a product called Sylph?

A. Yes, sir.

Q. Who makes that?

A. Circle Wholesale Drug Company.

Q. Where are they located?

A. 1966 Broadway, New York City. I do not believe they are in business.

Q. Do you still have their product?

A. We have a few packages.

Q. How recently were they in business?

A. Our last purchase was May 22nd, 1933.

Q. You have had no contact with them since?

A. None since.

Q. Is that product sold for and bought for reducing purposes?

A. It is.

Q. Does your company handle a product known as Stardom's Hollywood Dietade, Number 1?

A. Yes, sir.

Q. Who makes that?

A. The Hollywood Diet Corporation, 445 North La-Salle Street, Chicago, Illinois.

Q. Is that a drug preparation or a diet?

A. I do not know.

Q. Is it sold and bought for reducing purposes?

A. It is. I would say it was a drug preparation.

Q. Did you ever open the package?

A. I have never opened the package, no.

Q. You do not know whether it is a diet and a drug to be used in connection with it?

A. Well, from the size of the package it could not be a diet list, because it is too small. I would say it is a drug preparation.

Q. You do not know whether the company that makes the preparation places a diet instruction for special use for reducing.

Mr. Gust: I object to that.

The Witness: They have a circular attached to the package.

Examiner Norwood: Wait a minute. Read the question. (Question read by the reporter.)

Examiner Norwood: Objection overruled.

The Witness: There is a circular attached to the package. I have never read it.

By Mr. Michael:

Q. You have never read it. Is that company now in existence? Now marketing its product?

A. It is, yes.

Q. Do you have any way of knowing whether that is a drug with therapeutic effects, or a preparation in the nature of food?

A. We would not know that without investigating.

Q. Does your company handle a product known as Jad Salts?

A. Yes, sir.

Q. Who makes that?

A. Wyeth Chemical Company, Detroit, Michigan.

Q. Do you know whether or not Jad Salts is sold for use in reducing in connection with a diet?

Mr. Gust: I object to that for the same reasons.

Examiner Norwood: Read the question.

(Question read by the reporter.)

Examiner Norwood: The objection is overruled.

The Witness: I understand it is the condensed Jad Salts. There is two, you know. One is condensed Jad Salts, is used, I understand, for reducing, and Jad Salts proper is more or less a kidney preparation.

By Mr. Michael:

Q. Do you know whether or not the manufacturer of that product publishes a diet list with which the Jad Salts condensed are supposed to be used?

A. I do not know.

Q. Is that company in business now, and the product on the market?

A. Yes, sir.

Q. Does your company handle a product known as Eskay's Dextrettes?



A. Yes, sir.

Q. Who makes Eskay's Dextrettes?

A. Smith, Klein and French Company, Philadelphia, Pennsylvania.

Q. Is that preparation sold and bought for reducing purposes?

A. I understand it is.

Q. Is it now on the market, and is the company in existence?

A. Yes, sir.

Q. Does your company handle a product known as Welch's Grape Juice?

A. Yes, sir.

Q. Who makes that?

A. The Welch Grape Juice Company, of Westfield, New York.

Q. Do you know whether or not that product is sold for the purpose of substituting for certain foods in cases where a person is on a rigid diet for reducing?

A. Will you put that question again, please?

Examiner Norwood: Read it.

(Question read by the reporter.)

The Witness: Yes, sir.

By Examiner Norwood:

Q. Have you sold it for that purpose?

A. It is being sold for that purpose through their advertising.

By Mr. Michael:

Q. Is that company in existence, and the product being sold?

A. Yes, sir.

Q. Does your company handle a product known as Dietene?

A. Yes, sir.

Q. Who makes that?

A. The Dietene Company, of Minneapolis, Minnesota.

Q. Is that product sold and bought for reducing purposes?

A. It is.

Q. Is the product now on the market and the company in existence?

A. Yes, sir.

Q. Does your company handle the product known as Bonkora?

A. Yes, sir.

Q. Who makes that?

A. The Drug Trade Products.

Q. Chicago, Illinois?

A. South Wells Street, Chicago, Illinois.

Q. Is that product sold and used for reducing purposes?

A. Yes, sir.

Q. Is it now on the market and the company in business?

A. Yes, sir.

Q. Are all of those products that I have named in my previous questions, such as are commonly referred to as patent medicines, except Welch's Grape Juice or with the exception of Welch's Grape Juice?

A. With the exception of Welch's Grape Juice.

Q. And are they all products that are advertised to the general purchasing public?

A. I am not sure how they create the demand for their products, that is, all of them.

Q. Well, are all of those with which you are familiar with the products, advertised to the purchasing public?

Mr. Gust: I object to that, being certainly an uncertain question.

Examiner Norwood: Answer from your own knowledge.

Mr. Gust: Well, that question is so ambiguous.

Mr. Michael: All right, I will reframe it.

By Mr. Michael:

Q. I wish you would state generally whether these products are advertised to the purchasing public, and in your answer exclude those that you do not know.

A. Well, Germania Tea.

Q. I did not mean for you to go over the whole list. Just state generally whether or not they are advertised, and then except those that are not.

A. They are generally advertised to the public.

Q. Now, which ones don't you know?

A. You mean the items that you mentioned.

Q. Yes, the items that I mentioned.

A. Phytoroids. They are not. Sylph. Well, they are the only ones. The others I know.

By Examiner Norwood:

Q. Well, were those two formerly advertised?

A. I did not know anything about Phytoroids other than we carry it. It is a very slow seller, and along about ten years ago they did some advertising. Sylph was advertised, say three years ago. Before that time it was quite an item, big seller.

By Mr. Michael:

Q. Now, all these products that I have named are sold by your company in the various States where you have customers that you have named?

A. Yes, sir.

Q. And you ship them from your place of business here in Chicago to the customers where they are located?

A. Yes, sir.

Q. Now, in addition to those that have been named in the previous questions, does your company handle various pharmaceuticals that are sold or used for reducing purposes?

A. Yes, sir.

Q. Does your company handle thyroid extract, or disiccated thyroid?

A. Yes, sir.

Q. What makes of that product do you handle?

A. We have Armour and Company, and Burroughs, and Company of New York, Burrough Brothers Manufacturing Company of Baltimore, three brands.

Q. Now, are those all put up in preparations, put up in bottles?

A. Yes, sir.

Q. And sold in packages?

A. They are sold by us in original packages, yes, sir.

Q. Now, can those products be purchased by the general purchasing public on call?

A. They can.

Q. Are they also such products as are bought by the purchasing public on prescription?

A. Read that question.

(Question read by the reporter.)

The Witness: Yes, sir.

By Mr. Michael:

Q. Does your company handle a product known as Thyraclin Tablets?

A. Yes, sir.

Q. Is that a pharmaceutic?

A. That is a pharmaceutic.

Q. Who makes that?

A. Winthrop Chemical Company. Their factory is in New York City. They carry a warehouse out in Chicago.

Q. Is that a thyroid extract preparation?

A. Yes, sir.

Q. Is it a thyroid extract?

A. Yes, sir.

Q. Or desiccated thyroid?

A. Well, there is, the thyroid preparation.

Q. Well, what I am driving at, is it a formula containing thyroid extract or, thyroid extract or desiccated thyroid similar to the Armour product?

A. No, this is a combination of thyroid and other ingredients.

Mr. Gust: Well, I object to that. I think the formula is the best evidence of that. I do not think that that is quite true, that is a combination of other ingredients, and thyroid.

The Witness: They got their formula on the bottle. I have a circular there, if you care to read it.

Mr. Gust: All right.

By Mr. Michael:

Q. But it is a pharmaceutical preparation.

Mr. Gust: I object to this witness stating what he thinks is in Thyraclin.

Examiner Norwood: I do not think he has qualified as an expert, but he can tell what it is represented to contain to him at the time he purchased it, or what he represents at the time he sells it.

The objection is sustained as to the form.

By Mr. Michael:

Q. Is the product known as Thyraclin Tablets known as a thyroid extract?

A. It is.



Q. And represented as such?

A. Yes, sir.

Q. And it is a pharmaceutical preparation as distinguished from a patent medicine so-called?

A. Yes, sir.

Q. Do you know whether that product is sold and used for reducing purposes?

A. Yes, sir, it is.

Q. Does your company handle any Dinitrophenol preparations?

A. Yes, sir.

Q. Whose preparations do you handle of that type?

A. We have Nitra Phen capsules made by A. E. Mallard of Detroit, Michigan.

Q. Is that a pharmaceutical preparation?

A. Yes, sir.

Q. Is that sold and bought for reducing purposes?

A. It is.

Q. What others?

A. We have Dinitrophenol, the chemical itself. I do not know whether dinitrophenol is in these other preparations.

Q. Who makes the preparation that you handle?

A. Dinitrophenol?

Q. Yes.

A. Well, we buy ours from Merck and Company, Rahway, New Jersey.

Q. Is that product sold and bought for reducing purposes?

A. Sold. Well, Dinitrophenol is used for different purposes, only, I understand, the last few years they discovered it to be used for obesity.

Q. But it is being used?

A. It is being sold for obesity.

Q. For that purpose?

A. I know that.

Q. Do you have a pharmaceutical preparation of Dinitrophenol and soda?

A. Yes, sir.

Q. Who makes that?

A. Well, we have no pharmaceutical preparation. We have the chemical of Dinitrophenol and soda. It is not an ethical preparation. It is not a proprietary, not a patent medicine, just a chemical.

Q. Who makes that?

A. Merck and Company.

Q. The same one you mentioned before?

A. Yes. Any chemical concern can make it.

Q. Is that bought for reducing purposes?

A. Yes, sir. Both commercially and—

Q. Are all these preparations that I have named as your preparations, that are now being sold, and the companies that make them in existence?

A. Yes, sir.

Mr. Michael: That is all.

### Cross Examination

By Mr. Gust:

Q. Mr Faulhaber, you distinguish very distinctly, do you not, between the ethical products and the proprietary products, that is, there are well known trade differences, between the ethical products and the proprietary or patent medicine products?

A. Yes, sir.

Q. There are well known trade distinctions between them, aren't there?

A. Yes.

Q. And these thyroid preparations, which you say are made by Armour and Burroughs Wellcome, and Burroughs Brothers Manufacturing Company, desiccated thyroid and thyroid extract, they are ethical products?

A. Yes, sir.

Q. And so is Thyraclin?

A. Yes, sir.

Q. And so is Nitra Phen?

A. Yes, sir.

Q. And those are only advertised to the medical profession?

A. Yes, sir.

Q. And they make no therapeutic claims to them at all, just simply advertise their iodine content, and their methods of manufacturing, and so forth, is that so?

A. I understand it that way, yes.

Q. Now, on the other hand, the proprietary products, or patent medicines, so-called, are advertised direct to the public, aren't they?

A. Yes, sir.

Q. And they are advertised to be sold to the public without any doctor's advice or direction, aren't they?

A. Yes, sir.

Q. And that is true of all of these patent medicines or proprietary medicines that you have mentioned here?

A. Yes, sir.

Q. Now, did I understand you to say that you sold, or understood that Welch's Grape Juice was sold or bought as an obesity treatment?

A. Well, they use Welch's Grape Juice as a diet for reducing.

Q. As a diet for reducing?

A. Yes.

Q. In other words, if you drink enough grape juice and did not eat too much you would not get fat. Is that as I understand it?

A. I understand, you drink, if you drink grape juice and did not eat much of anything else, you would reduce, of course; and it has enough food value to keep you alive.

Mr. Gust: All right. That is all.

The Witness: It is advertised as such.

Mr. Gust: That is all.

(The Witness was excused.)

JAMES J. SMITH was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Michael:

Q. What is your name?

A. James J. Smith.

Q. In what business are you engaged, Mr. Smith?

A. Publishing.

Q. What is the name of your company?

A. Reilly and Lee Company.

Q. Where is that company located?

A. 325 West Huron Street, Chicago.

Q. State generally what the business of that company is?

A. Well, it is a book publishing business, every line, miscellaneous. We sell wholesale.

Q. You sell wholesale?

A. To the retail book store and jobber.

Q. That is, it is not a practical printing establishment; you do not print your own?

A. No, we do not print our own books; outside printing. We have not our own plant.

Q. You do not do your own printing, but you contract that?

A. Contract outside.

Q. But you deal in your own books that you handle?

A. That is it.

Q. You do not have books printed for other people?

A. No. The particular Reilly and Lee Company.

Q. Now, where is that business located?

A. 325 West Huron Street, Chicago, Illinois.

Q. How long has that company been in business?

A. Thirty years.

Q. To whom or to what class of trade does your company sell?

A. To the retail book trade, like Marshall Fields, Carson, Pirie, Brentano's; also jobbers like American News, Baker and Butler; wholesale book and stationery.

Q. Now, in what general territory do you sell your products?

A. You mean personally; you mean the company?

Q. Yes, the company?

A. Coast to coast.

Q. It is a nationwide business?

A. Yes.

Q. Do you ship your books that you sell from Chicago to the various customers wherever they may be located?

A. Yes, all shipping is done from Chicago.

Q. Is your company the publishers of a book entitled "Diet and Health With Key to the Calories," by Doctor Lulu Hunt Peters?

A. Yes.



Q. How long has that book been published?

A. Published in 1918.

Q. Approximately how many copies of that book has your company published and sold?

A. About 520,000.

Q. It is now being sold?

A. It is now being sold.

Q. Will you state whether or not that book is designed for use by persons in effecting reduction?

Mr. Gust: I think the book is the best evidence of what it is designed for.

Examiner Norwood: He can tell what he sells it for. The objection is sustained as to the form.

By Mr. Michael:

Q. State, Mr. Smith, what that book is sold for?

A. Well, the book is sold for reducing, for fat people, and to gain for thin people, through the key to the calories, as Lulu Hunt Peters puts it, or exercise.

Q. Is the book bought, among other purposes, for reducing purposes?

Mr. Gust: I object to that. The witness does not know what people buy the book for.

Mr. Michael: He may. If he does not know he can say so.

Examiner Norwood: Well, he can tell any facts that indicate what they buy it for. He knows what it sells for.

Mr. Michael: I will change that question.

By Mr. Michael:

Q. Mr. Smith, from your connection with the sale of this book, have you learned whether or not people who buy the book, buy it for use in reducing?

A. Yes.

Q. What?

A. Although I think, if I could mention that—

Q. Wait a minute. It may not be responsive to the question.

Examiner Norwood: He asked you whether you had learned, and you answered yes. That is the end of that question. Now, he can ask another.

By Mr. Michael:

Q. Now, have customers who have bought the book, bought it for reducing purposes?

Mr. Gust: I object to that, if the Court please, it being obviously hearsay.

Examiner Norwood: He can give any facts, or even any conversation with purchasers that have purchased it from him, or any facts that would indicate what the state of mind is with regard to that question.

The Witness: Well; in the first place, I do not sell direct to the customer. We sell wholesale. We sell the book stores, they in turn sell the customers. The customer comes in and asks for the book, practically in both ways, for reducing as well as gaining. The larger percentage is for reducing. The largest percentage of the sales is for the reducing angle.

By Mr. Michael:

Q. All right. Are there any books that you know of, besides those your company publishes, that are on sale for reducing purposes, any that contain instructions for a reducing diet?

A. Other than our own?

Q. Yes.

A. There is just one other that I know of published within the last three years.

Q. What is that?

A. The Hay book on Diet and Health, Doctor Hay.

Q. Who publishes that?

A. It is published by Scribners and Company of New York.

Q. Is that on general sale throughout the country?

A. That is on general sale, yes.

Mr. Michael: That is all.

Mr. Gust: I have no questions.

By Mr. Michael:

Q. Mr. Smith, are you acquainted with the fact that the author of this book, Lulu Hunt Peters, was a physician?

A. To the best of my knowledge, yes.

Mr. Michael: That is all.

By Mr. Gust:

Q. Did you ever see her certificate to practice?

A. No.

Q. How do you know she was a physician?

A. Just from the information. I say, to the best of my knowledge, information we had in the office.

Q. Somebody told you that?

A. In the office, yes.

Mr. Gust: I move to strike it out, being based entirely on hearsay.

Examiner Norwood: The motion is denied.

(The Witness was excused.)

(Whereupon a short recess was taken.)

## Afternoon Session

2:00 o'clock p. m.

Examiner Norwood: The hearing will come to order.

DOCTOR WILLARD OWEN THOMPSON, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

## Direct Examination

By Mr. Michael:

Q. Will you state your name please, Doctor?

A. Doctor Willard Owen Thompson.

Q. What is your business or profession, Doctor Thompson?

A. I am a physician.

Q. Where do you live?

A. Chicago, Illinois.

Q. Where is your office, if you have one?

A. 700 North Michigan Avenue.

Q. Are you in the practice of medicine or any branch thereof?

A. Yes, Internal medicine with special reference to metabolic diseases, I should say.

Q. How long have you practiced medicine with special reference to that subject?

A. The last ten and one-half years, I should say. Since finishing my internship.

Q. During that period you have confined your practice to this special field?

A. Yes.

Q. I wish you would state, Doctor, briefly, your edu-

cational qualifications, and your experience that qualifies you to practice medicine in this certain field?

A. Well, I graduated from the Harvard Medical School in 1923, interned at the Boston City Hospital for a little under two years; then was in charge of the Metabolism Laboratory and Thyroid Clinic at the Massachusetts General Hospital for four and one-half years; then came to the Rush Medical College and Presbyterian Hospital, where I have been carrying on similar work. In the last three years the work extended to the Cook County Hospital, where we have a Metabolism Laboratory.

Now, since I began doing some experimental work while I was an interne, I have continued that ever since, largely on thyroid, but also involving some other glands of internal secretion, notably pituitary and adrenal.

Do you want to know the Medical Societies I am a member of?

Q. Well, just a general statement of membership in scientific or medical societies?

A. I am a member of various scientific societies, the most important perhaps being the American Society for Clinical Investigation; also a member of the American Association for the study of goiter, and Association for the study of glands of internal secretion.

Does that cover it?

Q. Yes, I think that is sufficient. Now, have you completed your recital of your qualifications and experience?

A. Yes, I think that covers it in a general way.

Q. In addition to your private practice, Doctor, do you hold any official positions, involving your specialty?

A. I am associate professor of clinical medicine at the Rush Medical College.

Q. How long have you held that position?



A. Since July. Before that I was an assistant professor for five years.

Q. Does that work include teaching and work in the subjects that you have just enumerated?

A. I devote about one quarter of my time to the practice of medicine, and the rest of the time to hospital work the most of which involves investigation, part of it involves teaching.

Q. Well, does that teaching and that investigation involve metabolism and questions in regard to the thyroid gland?

A. Yes, for the most part. As I said, it does also involve to a limited extent some other glands of internal secretion.

Q. Now, in conducting your experimentation, I believe you made reference to experimental laboratories in metabolism, is that correct?

A. Yes.

Q. And where is that experimental laboratory?

A. In the Rush Medical College, and in the Cook County Hospital.

Q. Now, in that work, have you had actual experience and actual observation in regard to questions of metabolism, and on the thyroid gland, and of medication by means of desiccated thyroid?

A. Yes. We have made a large number of observations on that particular point.

Q. Are those laboratories what might be called fully equipped scientific laboratories?

A. Well, of course, there isn't any laboratory that does not lack equipment that would be desired, but for the most part we can get what equipment we need to do the work we are interested in.

Q. Do they afford facilities for fully controlled observation in making experiments?

A. Well, that is the only sort of work we do on patients, of course. I mean, we are not interested in any other kind of work.

Q. The patients during the experimentation are under constant and absolute control?

A. Yes. As well as observations of that sort can be controlled.

Q. They are not out patients?

A. Some of them are, and some them are not; but they usually take treatment which has been accurately regulated by ourselves.

Q. Is the regulation such that you can draw scientific conclusions of facts?

A. Yes.

Mr. Gust: Well, I object to that, if the Court please, that being a conclusion of this witness and improper. I think that is a question for the trier of the facts.

Examiner Norwood: He can swear as to whether he is conversant with these scientific principles, and can tell whether he considers himself qualified to draw these conclusions.

The objection is overruled.

The Witness: Yes, I should say very definitely, because we have been working very actively recently on the pathological physiology of the thyroid, which includes giving doses of certain thyroid derivatives, and observing the the effect accurately. In fact, we are very actively involved in this problem with certain other laboratories in the country.

Q. Now, basing your answer upon your training and experience, the general information you have and the ex-

perimental work that you have done in the subject, and related subjects, I wish you would state whether or not desiccated thyroid is such a product that it is safe for a layman to take for reducing by self-medication?

A. No, sir, I do not think it is.

Q. Basing your answer on the same considerations as given in the previous question, I wish you would state whether or not desiccated thyroid is a suitable or proper drug or preparation to use in all cases of obesity, or in all cases of desired weight reduction?

A. No, I do not think it is.

Q. I wish you would explain, Doctor, why you consider the taking of thyroid unsafe?

A. Well, first of all, the average person, the average obese person has a normally functioning thyroid gland. Whenever an excess of any form is introduced into the body it throws a strain on every other organ in the body, and the chief objection specifically to the use of thyroid is that it damages nearly every tissue in the body, but particularly the heart and blood vessels and to some extent the liver.

It occasionally precipitates such serious disturbances as coronary thrombosis in which one of the arteries supplying the heart muscle is plugged with a clot of blood. It occasionally, in heart cases, causes such serious disturbances as cirrhosis of the liver. The evidence available indicate that high blood pressure and hardening of the arteries are both more common in patients who have had hyperthyroidism than in patients who have not.

I think that covers it.

Q. Would you include the taking of desiccated thyroid by a person whose secretions are normal as an instance

of hyperthyroidism as you have just mentioned in regard to hardening of the arteries?

Mr. Gust: Just a minute. Let me hear that question.

Examiner Norwood: Read it.

(Question read by the reporter.)

Mr. Gust: I think that question is very ambiguous, but if the witness understands it, I do not know that I should object.

Mr. Michael: If you do not understand say so, and I will reframe it.

By Examiner Norwood:

Q. Do you understand the question, Doctor?

A. Yes. I think that you mean that when hardening of the arteries follows the administration of thyroid, the condition has been associated with hyperthyroidism.

By Mr. Michael:

Q. Yes..

A. Yes, I should say so.

Q. In other words, when you spoke before of hyperthyroidism resulting in hardening of the arteries, you meant to include instances where hyperthyroidism was occasioned by taking of desiccated thyroid. Is that what I understand?

A. No. There are not enough cases that have been followed for a sufficient length of time to state that as a positive fact. It is an inference by virtue of the fact that hardening of the arteries occurs in patients who have had toxic goiters.

Q. Is it your opinion that the same results follow a case of thyroid taken internally added to the normal secretions of the thyroid gland?

A. Yes.

Q. Now, do you use thyroid extract or desiccated thy-

roid in your practice; or in any of your work for effecting reduction in patients?

A. Well, in rather rare instances, but almost never.

Q. In your own opinion is desiccated thyroid, or thyroid extract indicated for the treatment of exogenous obesity?

A. By and large, no.

Q. What classes of cases would you say desiccated thyroid is indicated in?

A. Well, of course, in patients with hypothyroidism, in which there is some associated obesity, then, of course, the specific treatment is the administration of a suitable dose of thyroid. However, it should be pointed out that a considerable degree of obesity is not associated with hypothyroidism. In other words, the thyroid is not an important factor in the causation of obesity. Most of the weight gain in hypothyroidism is just an increased amount of water and tissue.

There are certain cases in which after a considerable period of suitable reducing diet patients seem to reach a standstill where some physicians feel that the administration of thyroid in small doses is indicated in addition to the diet. In my opinion, that probably is not correct, and probably it is unwise at any time except in the absence of hypothyroidism to use desiccated thyroid for weight reduction.

Q. You mean except in the presence of hypothyroidism?

A. Yes.

Q. So in your own work, you would use desiccated thyroid only in those cases where hypothyroidism is present?

A. Yes, of course, that statement has to be qualified a little bit. Every so often a patient is not very enthusiastic about dieting, and insists upon some more rapid method



of losing weight. There rather under protest, the patient is allowed to take some thyroid with careful observations of the metabolic rate, but I think on the whole it is not the best therapy.

Q. And do I understand that you only give it in such cases where the patient is under regular observation?

A. Oh, yes. That is very important.

Q. Have you ever found in your experience and your observation of patients and the people you have come in contact with in your profession, that members of the public take desiccated thyroid or thyroid extract on their own account?

A. Yes, it is done quite extensively.

Q. Have you found that people that you have come in contact with, including your patients, know that desiccated thyroid is a reducing agent?

Mr. Gust: Why, I object to that as being something that somebody has told him.

Examiner Norwood: Read the question.

(Question read by the reporter.)

Examiner Norwood: I think that he can tell any fact which would indicate what they know, but he may not swear to what the other people know. He can even tell their conversations, the statements to him professionally, or give any other facts that would indicate to him what they know.

The objection is sustained.

By Mr. Michael:

Q. Doctor, have you come in contact with people who have secured and taken desiccated thyroid on their own account for reduction?

Mr. Gust: Now, I think that is calling for something that somebody has told him, hearsay.

Examiner Norwood: He is asking for a matter of fact. Read the question.

Mr. Gust: My objection is that it calls for a fact, it calls for the Doctor to relate something that someone else told him.

Examiner Norwood: Read the question.

(Question read by the reporter.)

Examiner Norwood: Objection overruled, unless the witness can answer that under his own knowledge, or as a result of his own investigations.

The Witness. Yes. Patients not infrequently show up who have taken large doses of thyroid and are admitted to the hospital because of the state they are in as a result of taking this thyroid.

By Mr. Michael:

Q. What state have you observed them to be in?

A. The sudden loss of weight that goes with an excessive dose of thyroid produces marked nervousness and palpitations, rapid beating of the heart. In fact all of the symptoms that are associated with a toxic goiter.

Q. You have observed these conditions in patients?

A. Yes.

Q. Now, the effects of desiccated thyroid on the human system that you have detailed in the previous answer, Doctor, are those effects that you have enumerated based on your factual knowledge as obtained by your experimental and clinical work?

A. Yes.

Q. Now, I wish you would look at this formula of Marmola, the formula of which has been given in evidence here, and on which this paper I hand you has thereon a copy as admitted by counsel.

Mr. Gust: Yes.

By Mr. Michael:

Q. And examine it, and state whether or not in your opinion that formula representing one dose of the preparation, is such a preparation of medicine that a layman may take for self-medication, four doses a day, one after each meal and one before retiring, for a period of from sixty to ninety days, with safety when taken for the purpose of reduction?

A. No, it is not safe.

Q. What is the ingredient, or the ingredients in that medicine which in your opinion have an effect on, in causing weight reduction?

A. Desiccated thyroid.

Q. What other effects would you say that that medicine would have besides the weight reduction that might be caused by the desiccated thyroid, what other therapeutic effect?

A. By therapeutic effect do you mean any effect on the patient?

Q. Yes.

A. Well, it might cause any of the symptoms that I have already referred to from taking thyroid. It would cause in a large number of patients, some nervousness, some palpitation; and another point which I think is quite important, is this, and which is often lost sight of in all weight reduction remedies, and that is that unless the intake of energy and the expenditure of energy were paid attention to, the body weight might actually increase rather than diminish. Thyroid sometimes actually stimulates the appetite causing an increased intake of food so that a weight reduction program which does not pay attention to the dietary intake is of no value whatever from the standpoint of weight reduction.

Q. Now, would that proportion as shown on the formula before you have a laxative effect, in your judgment?

A. Well, there is some cascara in it, which has a laxative action; and desiccated thyroid sometimes stimulates the activity of the gastro-intestinal tract, and increases the number of bowel movements although, with the dose recommended, that is not a constant accompaniment.

Q. You mean the dose of desiccated thyroid?

A. Yes.

Q. Would you consider that such a medicine, in the dosage as specified in the previous question, taken over a period of sixty or ninety days was beneficial or deleterious referring to the laxative effect?

A. I should say deleterious.

Q. Would it have any tendency, or would it perhaps cause the formation of what is sometimes called a laxative habit over that period of time?

A. It might, yes.

Q. Is the use of a formula of that kind for weight reduction for general application to the general purchasing public correctly described as a scientific method of weight reduction?

A. No, I should say not. First, of all, any prescription which involves so many constituents as this is hopelessly unscientific. There is only one thing in here which is used for the purpose of weight reduction, and that should be the thing prescribed, if anything is going to be used.

Q. Well, is the use of one-half a grain of desiccated thyroid a dose, four doses a day for a period of from sixty to ninety days, a scientific method of causing a reduction in flesh, as applied to the general public?

A. No, it is not.

Q. Can you state what the recognized method of reduction is by the consensus of medical opinion?

Mr. Gust: I object to that, if the Court please.

By Examiner Norwood:

Q. Are you acquainted with the consensus of medical opinion on that subject?

A. Yes, I should say so.

Examiner Norwood: Objection overruled.

Read the question.

(Question read by the reporter.)

The Witness: The administration of a diet sufficiently low in calories to cause a loss of weight. This diet must be well balanced and adequate in all food stuffs. The number of calories ordinarily contained in such a diet is roughly the basal requirement of the individual, which means that the expenditure of energy of the individual at rest is determined by suitable apparatus, and the total number of calories in the diet based on the basal twenty-four hour expenditure of energy by the individual concerned.

It should be added that this diet must be administered under the direction of somebody thoroughly familiar with dietary principles, and the patient must be watched carefully throughout the period of weight reduction.

Q. Are there some people to whom the administration of thyroid in any dosage or over any period of time is especially harmful or dangerous?

A. Yes, in rare instances even small doses of thyroid, by stimulating the circulation and throwing an extra load on the heart muscle cause such serious disturbances as a coronary thrombosis, or angina pectoris. I think those are the two most serious complications of small doses.

Q. Well, are there any particular conditions that may exist in the average person that would practically prohibit the use of desiccated thyroid by such persons?



A. Yes. Any form of heart disease provided, of course, there is no hypothyroidism. There is a form of heart disease associated with hypothyroidism, commonly referred to as myxedema heart in which the administration of thyroid is definitely beneficial and actually improves the action of the heart.

Q. But, generally speaking, as I understand it, would you say that persons with any form of heart disease should not, for self-medication, take thyroid extract?

A. Thyroid should never be used for self-medication.

Q. But would be especially dangerous for such persons to do so?

A. Yes, I should say so.

Q. Doctor, are the cases of endogenous obesity small in comparison with the cases of exogenous obesity?

A. That is a matter which depends to some extent upon the opinion of the individual you ask, because of the fact that the precise cause of the laying down of body fat in excess is not known. There is, however, no doubt in the minds of most investigators that people who are fat are by and large people who eat too much.

Q. In your observation of cases, how would you compare the number of cases of obesity that you found to be due to disfunction of the endocrine glands, as compared to those that were occasioned by overeating and other extraneous causes?

A. I should say they constitute a small percentage of the total.

Q. What do you mean by small percentage?

A. Well, I should say perhaps, oh, ten or fifteen per cent.

Q. Are you acquainted with the statistics on this subject?

A. Statistics on the subject are of no particular value because of the fact that the causes of laying down the fat is not known.

Q. Well, what are the statistics as given in the authorities as to percentages?

Mr. Gust: 'I object to that. The doctor has already said they are of no particular value.

Examiner Norwood: Yes, don't tell anything that you do not believe. You will have to put those in separately. The objection is sustained.

By Mr. Michael:

Q. Doctor, basing your answer upon your own observation, I wish you would state whether or not the great majority of cases of people who wish to reduce, and who are not put on a reducing regimen by a physician for some special purpose, as for instance disease, are those whose obesity is caused by overeating?

Mr. Gust: Why, I object to that as being pure speculation.

Mr. Michael: I am asking for his own observation.

Examiner Norwood: Read the question.

(Question read by the reporter.)

Examiner Norwood: The objection is overruled.

The Witness: That again.—

(Question read by the reporter.)

The Witness: That question reads are those in whom obesity is caused by overeating?

By Mr. Michael:

Q. The great majority?

A. Yes, yes. And perhaps I did not make myself quite clear. I was trying to stick strictly to the facts in the case, but even though there is an under function of the glands of internal secretion, the obesity is usually caused

by overeating. In fact, there is no doubt that in practically every instance that if a patient sticks to a low enough intake of calories in the form of food, weight can be reduced, a large amount of work has been done on that point by Doctor Newburg, of the University of Michigan.

Q. Well, kindly state whether or not the great majority of cases that have come under your observation are cases in which treatment by thyroid extract or desiccated thyroid is not indicated?

A. Yes, that is true.

By Examiner Norwood:

Q. And in those cases would it be injurious?

A. Yes.

Mr. Michael: That is all.

### Cross Examination

By Mr. Gust:

Q. Doctor, thyroid extract or desiccated thyroid, I believe you said was a specific in hypothyroidism?

A. Yes.

Q. And I believe you said that one of the reasons was that it caused the patient to lose water. Is that right?

A. Yes, but I did not say how much water.

Q. No, I did not say that you did, Doctor. I am simply trying to find out if you did not say that they lost water?

A. Yes, that is correct.

Q. That is one of the results that happens from internal medication with desiccated thyroid, is it not?

A. Yes, but particularly in the presence of an under function of the gland.

Q. But it is also to be observed when there is no under function of the thyroid gland?

A. To a lesser extent, yes.

Q. But nevertheless to some extent?

A. Yes.

Q. Is it your theory that that water comes from some of the watery tissues, fat tissues?

A. No. Very little water is held in the tissues by fat.

Q. So it comes from some other source than the fat tissues?

A. Well, it probably comes from all the components of tissues, fat, carbohydrate and protein. But it just so happens that more water is bound by carbohydrate and protein than is bound by fat.

Q. Then it would be oxidation of the carbohydrate and protein and fat that releases the water, in your judgment?

A. Yes, I think so.

Q. You think that is the explanation, that you regard as the particular one for the release of water?

A. I think while water constitutes a majority of seventy-five per cent or more of body tissues, that it is a comparatively inert substance so far as this thing goes, and it merely goes where it is wanted.

Q. When you have that, as the tissues are oxidized then water is released?

A. Yes.

Q. Now, Doctor, I take it that you treat your own patients seeking to reduce practically in every instance with a diet?

A. Yes.

Q. And as I understood it, you prescribe that diet with great scientific care and accuracy as far as you are able to, is that right?

A. Yes.

Q. And your opinion is that the diet should be prescribed and supervised by an expert dietitian, is that right?

A. Well, or a physician who knows what he is doing.

Q. Well, all right.

A. And I would not say a dietitian. I mean, if a dietitian is involved it should be one under the supervision of a physician who knows what the dietitian is doing.

Q. Then, it gets down to this, that you ought to have a physician who is learned in the matter and competent, or you ought to have a dietitian and a physician; is that right?

A. Yes.

Q. I see. And I take it it would be your opinion that it would be unsafe for the patient to attempt that sort of thing for himself?

A. That is correct.

Q. Now, I take it that you feel the same way about any exercise which was designed to reduce, and that that ought to be under the supervision of a physician as well?

A. If you qualify that for purposes of weight reduction, I would say, yes.

Q. Well, that is what I did so state. I say, exercise for the purpose of self-reduction, or reduction of flesh, obesity, ought to be taken under the observation and direction of a competent physician?

A. However, that statement should be qualified to this extent.

Q. Well, do you want to qualify it?

A. To this extent, I mean the average individual is very liable to take a considerable amount or a varying amount of exercise which in a large percentage of cases does no particular harm.

A. I realize that, Doctor, but here, if you are given an individual who has his normal exercise habits, and still is obese and gaining in weight, and he wants to undertake a program different from his normal habits, for the pur-



pose of weight reduction, that sort of individual should, as I understand you, go to a Doctor, is that correct?

A. That is correct.

Q. I understand it to be your opinion that it would be unsafe for him not to?

A. Yes.

Q. Now, I also understand that it was your opinion that any patient might destroy the efficacy of any treatment by eating too much, increasing his intake. Is that true?

A. That is correct, yes.

Q. It is quite obvious that no matter how much his metabolic rate may increase, or his oxidizing processes stimulated, that if he increases his food intake enough he is not going to have any weight reduction, is he? It is just a matter of common sense, is that right?

A. Yes, I should say so.

Q. Now, do you call yourself a specialist in endocrinology?

A. The word endocrinology has come to be associated with a certain type of physician, and most of us try to avoid the term. It is really a correct term, and it should have the proper meaning, but very early in the development of the science of endocrinology, there were a lot of very wild individuals in the field, and endocrinologists came to be a certain type of individual who usually did not have a high standing in the profession. I should say it is more correct to say specialist in metabolic diseases.

Q. You say a lot of wild people. Is that it? Who considered themselves specialists in endocrinology?

A. Oh, yes, as in every other field.

Q. There were a lot of views held by endocrinologists that you can not subscribe to?

A. That is correct.

Q. Is that a proper statement? Well, do you so far subscribe to their views that you believe all the endocrine glands are inter-related?

A. Oh, yes. There is no doubt of that.

Q. There is no doubt of that, at least that far. Do you believe that the thyroid gland has any effect on the other endocrine glands?

A. Yes.

Q. Now, is it your opinion that there is a hormone that is normally manufactured by an individual's thyroid glands?

A. Yes.

Q. And it is your opinion that that same hormone is present in this desiccated thyroid?

A. Yes.

Q. Then, is it your opinion that the taking of desiccated thyroid internally is simply giving the patient an increase of the hormone of the thyroid gland?

A. Yes, that is true, but that doesn't mean that it is wise, of course.

Q. Well, I appreciate your antipathy toward it, Doctor; but that is true, is it, as a statement?

A. That is correct.

Q. Now, I take it that you do not consider it wise, Doctor, to use any internal medicant except under a Doctor's supervision, do you?

A. Well, I think that by and large that that is a fair statement.

Q. That is a fair statement of the attitude of the medical profession, at least some portion of the medical profession. We won't say whether they are the most learned or the most ethical, or what term we may use; but

at least some portion of them have that view, don't they, Doctor?

A. Yes, I should say so. Of course, there are extremists in medicine as in everything else. There are a great many common remedies that are used, of course, that probably do no particular harm. I do not think it is the best medical practice to use them, but a large number of things in the pharmacopoeia are characterized by the fact that while they do not do any particular good, they do not do any particular harm.

Q. Now, you take some simple drugs like castor oil, the taking of castor oil in some situations may prove very definitely harmful, might it not?

A. That is correct.

Q. And the taking of aspirin in some situations may prove very definitely harmful?

A. In rare instances, yes.

Q. And I take it that is true of quinine?

A. Yes.

Q. And a great many other drugs in the pharmacopoeia may prove very harmful to a person who takes them if they are so constituted, that situation exists, in which these drugs should not be taken. Is that right?

A. Yes, sir. that is true. But—

Q. Now—

Mr. Michael: Wait a minute. He had not finished. Let him explain his answer.

Examiner Norwood: If he is satisfied with the answer, you can bring out anything further you wish to develop.

Mr. Gust: You can bring out anything you want.

By Mr. Gust.

Q. Now, doctor, you said that in rare instances excessive doses of thyroid might bring on coronary thrombosis. Is that right?

A. Yes.

Q. I take it that that might happen whether the patient indulged in self-medication of the thyroid, or whether it was given to him by a physician. Is that true?

A. It is less liable to occur in the hands of a physician, because the physician has ways of telling whether the heart is damaged, to begin with.

Q. Provided the physician is sufficiently skillful and gives a sufficiently thorough examination to ascertain that fact. Is that so?

A. Yes.

Q. I take it that the individual who might suffer from coronary thrombosis, from excessive doses of thyroid is a man who had some heart damage when he starts taking it. Is that true?

A. Yes, that is correct.

Q. Now, I take it that a man who might suffer from cirrhosis of the liver from excessive doses of thyroid, is also a man who had some liver damage to start with. Is that right?

A. No, that is not necessarily correct.

Q. Well, do you think it is more probable that that sort of an individual, that it is more probable with that sort of an individual?

A. I do not know. All that is known is that liver damage does occur in certain cases of toxicity. Whether the liver is damaged beforehand or not, is not known.

Q. And because you have found the liver damage in same cases of toxic goiter, you thereupon reason that probably, or possibly the same result might come about from taking excessive doses of desiccated thyroid. Is that right?

A. That is correct.

Q. Now, does that same thing apply to coronary throm-

basis, that you have observed that condition from goiter?

A. Yes, it has been observed in goiter.

Q. And you reason from that that it might happen from desiccated thyroid?

A. No, we actually see it happen from desiccated thyroid.

Q. You see it happen?

A. We see it happen, yes.

Q. Now, do not some physicians believe that in a toxic goiter, the material manufactured by human beings own goiter, their own thyroid is a different substance than manufactured by a normal thyroid?

A. There are some physicians who hold that point of view, yes. But all the physicians that do hold that point of view, also state very specifically that an actual overproduction of the normal product of the gland is also, also takes place.

Q. In other words, those physicians believe that in a toxic goiter the individual's thyroid manufactures an excess of the, shall we call it normal product, and also manufactures a different, a toxic product?

A. Yes, that is true. That point of view is gradually being abandoned as new knowledge comes forward, and the chemical evidence available at present indicates that in toxic goiter the fundamental pathology is an overproduction of the normal hormone.

Q. Now, there isn't any way of determining that except by observation and reasoning? I mean to say, nobody has ever succeeded in analyzing the product of a toxic goiter, have they?

A. Well, this has been done. The dry thyroid has been prepared from a toxic goiter gland in the same manner as from hog or sheep thyroid, and it produces in pa-



tients with an under function of thyroid exactly the same effect.

Q. And that might be accounted for in the production of this product, the toxic element was destroyed or rendered inert, might it not?

A. No, I think that is not the explanation, not a possible explanation.

Q. You do not think it is a possible explanation?

A. I do not think so.

Q. Well, don't you think it possible that in the preparation of desiccated thyroid from an animal with a toxic goiter, that the product causing the toxicity might not be rendered inert?

A. You mean in preparing it for use?

Q. Yes.

A. The dry thyroid?

Q. Yes, sure.

A. That would not exclude the fact that what is left still raises the metabolism and produces all the effects of hog or sheep thyroid.

Q. That, I understood, we were accounting for by the fact that the thyroid gland in a toxic goiter was producing two things, the normal material and a different material?

By Examiner Norwood:

Q. Are you familiar with that process, Doctor, of preparing that thyroid from these glands?

A. Yes.

By Mr. Gust:

Q. In general, it is a drying in a pan?

A. Yes. It has to be dried.

By Examiner Norwood:

Q. You would know then, the toxic matter was eliminated, would you; would there be any process likely to eliminate it?

A. Yes, I think it would only be fair to say that there is a faint possibility that a toxic material might be removed by the method of defatting with ether acetone, but all available chemical evidence on thyroid, we are thoroughly familiar with this particular point, would indicate that is not so.

By Mr. Gust:

Q. Well, Doctor, do you treat obesity, yourself?

A. Yes.

Q. That is, pay patients?

A. Yes.

Q. In your office?

A. Yes.

Q. When were you admitted to practice in Illinois?

A. In 1930.

Q. And have you been practicing, generally, that is, seeing pay patients in your office ever since?

A. Yes, practically. Of course, I was in Massachusetts before that.

Q. But I mean in Chicago.

A. Yes.

Q. Well, when you were in Massachusetts, were you in private practice?

A. I saw a few patients. I was licensed to practice, of course, but most of my time was spent in experimental work. I had seen patients every day.

Q. How many obesity patients have you treated in your own private practice for pay?

A. Well, I don't know.

Q. Well, just give us an idea?

A. Oh, I should say it runs into the hundreds.

Q. Into the hundreds; that is over the five-year period?

A. Yes.

Q. Doctor, is it your opinion that in taking desiccated thyroid internally stimulates the thyroid gland of the individual taking it?

A. No, I don't think it does.

Q. Doctor, are you familiar with the U.S.P. dose of thyroid?

A. Yes, but it does not mean anything. At least, I think I am.

Q. What is it?

A. Well, it is a grain, I believe, a day, or more, as indicated. I may be wrong in that, as I never look up the U. S. P. dose on thyroid, because the dose of thyroid has to be determined in each individual case.

Q. Are you familiar with the U. S. P. dose of cascara sagrada?

A. Yes.

Q. What is that?

A. Two to eight grains a day.

Q. Well, Doctor, do you seriously think that the administration of a quarter of a grain of cascara sagrada four times a day, sixty or ninety days, would cause a patient any particular harm?

A. Yes, I think it is unwise medication; occasionally would cause definite disturbances in the intestinal tract.

Q. I suppose he would get that disturbance if he took any other given laxative, such as cascaxets?

A. Yes.

Q. Phenolphalien?

A. Yes, that is correct.

Q. And do you regard cascara as rather a mild laxative?

A. Yes.

Q. Are you familiar with bladderwrack, that is in this preparation?

A. Well, I have had no experience with its use. I understand it is a sea weed containing iodine.

Q. You have had no experience with its use at all?

A. None whatever.

Q. And have you had any experience in the use of phyto-lacca?

A. No, I have not. I understand it is an emetic.

Q. Doctor, is it your opinion that dinitrophenol is safe for self-medication?

A. No, it is very harmful.

Q. Doctor, suppose an obese patient who is otherwise healthy, and normal, except for his obesity, and wants to reduce, and refuses to follow your diet advice and insists on some internal medicant, do you know of any other internal medicant that is in commercial use, except thyroid, to give him?

A. Well, dinitrophenol, of course, was very much in vogue for a time, until its harmful effects were demonstrated. I should say thyroid was the most satisfactory thing to use if any medication were to be used.

Q. It is more satisfactory than dinitrophenol, is it?

A. I should say so, yes.

Q. In your judgment?

A. That does not mean I am saying it is wise therapy.

Q. I quite understand. You have made your position on it very clear, Doctor. I take it, Doctor, that if a patient's metabolic rate is increased, and he commences to reduce in weight, that there is an additional burden put on his elimination apparatus, if you want to call it apparatus?

A. Yes.

Q. And it is indicated, at least, if the patient is not

having normal elimination, to prescribe some laxative, is that right?

A. No, I think that is probably not the way to treat constipation.

Q. You do not want to subscribe to giving cathartics at all, is that it?

A. Well, no; I would not want to make a statement like that; but I think by and large, the treatment of constipation is not the administration of cathartics.

Q. It is a rather popular temporary expedient, at least, isn't it?

A. Of course, what is popular and what is correct, may be different things.

Q. May be different. But at least, it is popular. You will go that far with me, won't you?

A. (No response.)

Mr. Gust: I think that is all.

#### Re-direct Examination

By Mr. Michael:

Q. Doctor, I just want to get a matter clear. You say that—would you say that the hormone in desiccated thyroid is identical with the hormone secreted by the human thyroid gland, or do you mean to say that they are merely of the same class or kind?

A. Well, that statement, that question, the answer to that statement can be very involved. The fundamental constituent of all thyroid hormones is what is known as thyroxin, a comparatively simple compound isolated in the thyroid by Dr. Kendall, of the Mayo Clinic, about 1914; and that undoubtedly is the nucleus of both human and animal thyroid hormones. The hormone as secreted is probably a much more complex substance. Thyroxin, it



self, because of the combination of thyroxin with a great many other—all available evidence indicates that whether there are minor differences in human and animal thyroid, they produce, nevertheless, exactly the same thing.

Q. So there are distinctions?

A. Well, there are probably biological differences, yes.

Q. Now, in regard to self-medication, would your views as to the desirability or undesirability of that be relative depending upon the nature of the medicine used?

Mr. Gust: I object to that as being leading and suggestive.

Examiner Norwood: Read that.

Mr. Gust. This witness does not have to be instructed. (Question read.)

Examiner Norwood: I really do not think that the leading will do any harm in this case. The objection is overruled.

By Mr. Michaël:

Q. Doctor, I believe you were asked, on cross-examination, and made the general statement that you were opposed, or did not approve, of self-medication, generally. Now, is that disapproval of the same weight in regard to all self-medication, regardless of the preparation used?

A. No, I should say not. For example, the taking of aspirin usually is a comparatively harmless affair. There are, of course, exceptions to that; and there are a great many other similar situations in which self-medication is not so harmful, as the taking, for example, of desiccated thyroid.

Q. And in regard to such medicines, would your objections be as strong against self-medication as against self-medication by the use of desiccated thyroid?

A. No, sir; I should say not.

Q. Now, in your experience and contact with people who have desired, or who have been given a reducing treatment, have you run across considerable numbers of people who were really not obese, but merely thought they were, or desired to reduce their weight; have you found cases like that?

A. Yes.

Q. In considerable numbers?

A. Yes, sir; quite a number, yes.

Q. Would you consider, Doctor, that such a person who was apparently in normal health would suffer any ill consequences; or would it be inadvisable for such a person to use a reasonably restricted diet, or reasonable reducing exercise, the information of which they had acquired from reading, for instance, without medical supervision?

Mr. Gust: I object to that, if the court please, being a question of about seventeen parts.

Examiner Norwood: I think it is clear. The objection is overruled.

Do you understand the question, Doctor?

The Witness: Yes, I think so.

Well, there are, of course, quite a number of persons who are fairly familiar with various dietary principles, and who know considerable about, in general, about the way in which the body functions. Some people can often restrict their diets in a fairly intelligent manner without doing any particular harm, although, of course, harm does come from improper control of diet.

By Mr. Michael:

Q. Well, I am referring not to the real obese cases, but to persons who may be just a trifle overweight, or who want to reduce a few pounds; would a reasonable dietary

restriction on their own part, reasonable exercise for reducing be of serious consequence to such persons?

A. Not provided they understand the principles involved in diets.

Q. Well, is it not true that those principles and that information is readily available to any intelligent person?

A. Yes, it is readily available if they know where to get it.

Mr. Michael: That is all.

Mr. Gust: That is all.

(The witness was excused.)

Examiner Norwood: There being no further testimony, after consultation and agreement, the hearing is now adjourned, to reconvene on five days' notice.

(Whereupon, at 3:35 o'clock, p. m., January 8, 1936, the hearing in the above-entitled matter was adjourned to reconvene on five days' notice.)

## PROCEEDINGS

(Continued February 4, 1936)

Examiner Norwood: The hearing will come to order pursuant to adjournment at Chicago, Illinois, on the 8th day of January and order and due notice issued by me on the 22nd day of January 1936. Hearing in this case is now convened for the taking of further testimony for the Complainant at 10:00 o'clock a. m., February 4, 1936, in Room 424, Rochambeau Building, office of the Federal Trade Commission, Washington, D. C.

DR. CARL VOEGTLIN, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Michael:

Q. You have stated your name to the Reporter, have you, Dr. Voegtlin?

A. Yes.

Q. What official position do you occupy, Dr. Voegtlin?

A. I am pharmacologist director and chief of the Division of Pharmacology at the National Institute of Health, which is a part of the Public Health Service.

Q. That is a position under the United States Government?

A. That is.

Q. How long have you been connected with the Government, Dr. Voegtlin?

A. Since 1913.

Q. How long have you been chief of the Division, as you just testified?

A. Since that time.

Q. What is the general nature of your work with the Government?

A. I am in charge of a group of scientists, medical scientists, who are carrying on research in prevention and treatment of disease. In addition, I act as advisor to the Surgeon General in matters pertaining to the use of drugs from the pharmacological point of view.

Q. Now, Dr. Voegtlin, I wish you would give briefly your educational experience or qualifications that have qualified you as a pharmacologist and to hold your present position?

A. I held a position as assistant in medicine in—

Q. May I interrupt? I mean by my question, starting at the beginning of your education.

A. Oh, beginning with the education?

Q. Yes.

A. As to the ordinary school education, I studied chemistry, specializing in organic chemistry in various Universities abroad, Munich, Berlin, Geneva, Freiburg, Manchester. After graduation I came to this country and was offered a place as instructor in chemistry at the University of Wisconsin.

From there in 1905 I was asked by the Professors of Medicine at Johns Hopkins University to accept a position at that institution to establish the first metabolism laboratory, research laboratory, in any medical clinic in this country.

There I carried out researches dealing with the metabolism and diet, effect of diet on the course of typhoid fever, and did some pioneer experimental work on the function of the parathyroid gland in relation to lime or calcium metabolism, and showed for the first time that in the absence of these glands there is a disturbance in the lime metabolism, a decrease in the calcium content of the blood, which results in marked pathological manifestations called *tinea*. These are strikingly eliminated by a suitable dose of calcium salt given intravenously.

This was the first research showing that there is a relation between mineral metabolism and the function of a gland of internal secretion.

Later on I was asked to join the Department of Pharmacology at the Johns Hopkins Medical School, headed by the leading pharmacologist of this country, Professor Abel, holding the position of associate professor for six years.

During that time I carried on further research in various



topics, medical research, anaphylaxis, with relation of the liver to anaphylaxis, a small piece of work on the function of the thyroid gland which dealt with and attempted to discover the chemical nature of the active principal of the gland.

Definite iodine compound, organic iodine compound, was tested out by the patient suffering from deficiency of thyroid function, and experimentally on a dog which was operated upon by Dr. Halstead, then professor of surgery, and had all the manifestations of hypothyroidism.

This research was negative in character; in other words, the substance studied had no effect in influencing the condition known as hypothyroidism, but many years later was shown that it was very closely related to the active principle of the thyroid gland known as thyroxin.

Then during that time of my connection with the faculty of Johns Hopkins Medical School, I, of course, taught medical students pharmacology for about six years, and the purpose of pharmacology is to give the future practitioners of medicine a knowledge of the underlying principles, physiological principles, which govern the therapeutic action of drugs on patients.

I then came here, as I said, in 1913, and did various kinds of researches. First, I was interested with a group in the study of metabolism in pellagra, a nutritional disease, had charge of this work which was done on animals as well as on patients in a special hospital devoted to the study of this disease. There, among other things, we found that an extract of liver if prepared in a certain way and given to clear cut cases of pellagra fed on a diet which presumably was very close—as the same as the one where taken before they got sick, would improve their condition in a very astonishing way, indicating that liver contains something—

Examiner Norwood: Doctor, I don't think that we want to go into those details on those experiments right now. He simply wants you to state the facts of your qualification—

The Witness: In general?

Examiner Norwood: You see.

The Witness: Very well.

Well, many other researches were carried out by myself and my colleagues, treatment of syphilis by arsenicals, studies of the last year, the last few years, on the chemical side of cancer.

I have held various offices in scientific societies. I am a member of the A. M. A., chairman, formerly chairman of the Section of Pharmacology and Therapeutics, member of the American Society for Pharmacology and Experimental Therapeutics; former president of that Society; chairman of the American Federation of Biological Societies, experimental biology, which is an organization of medical research workers. I belong to various other scientific organizations.

Have also been a member of several conferences brought by the Health Section of the League of Nations for the biological standardization of special drugs, and in this connection the purpose of those conferences was to devise standards which would permit to accurately assay some very potent remedies, such as insulin, pituitary extract, thyroid preparations of definitely known potency, a matter which is very important with such powerful drugs.

I am on the permanent commission of the Biological Assay of the League of Nations, a group of men of smaller number, leading specialists in their line. I am also a member of the International Pharmacological Committee, of which there are five members from five different countries; I am the American representative.

I suppose that covers it.

By Mr. Michael:

Q. Now, will you state, Doctor, what degrees you hold and the schools in which they were granted?

A. I hold the degree of Doctor of Philosophy from the University of Friedburg, in Germany.

Q. Any others?

A. No others.

Q. You earned various degrees leading up to the Doctor of Philosophy degree?

A. Yes.

Q. What were those?

A. There was nothing required except graduation from what is called in this country, perhaps, college.

Q. And the study of the other schools which you mentioned were either preceding that degree or post graduate work after?

A. All before my graduation except Manchester, University of Manchester, and then the University of Berlin; that covers it.

Q. These special studies that you have made and the research work that you have done involve generally, do they, the subjects of the therapeutic effects of drugs, metabolism and nutrition?

A. Yes, I have covered all those fields in my researches.

Q. Do you classify desiccated thyroid, or thyroid extract, as a drug?

A. I certainly do.

Q. In your work in pellagra that you mentioned did any special discovery come out of that as to the cause of pellagra?

A. As I said, we showed that a liver extract prepared in a certain way supplemented an apparent deficient diet which was supposedly the cause of pellagra in such a way

that the patient improved markedly as a result of the administration of that extract.

Q. Do I understand correctly that that work developed the fact of the discovery that pellagra is a nutritional deficiency disease?

A. Contributed to the evidence to that effect.

Q. Was that work carried on by your group at the same time as Dr. Goldberger conducted his work?

A. Yes, yes.

Q. It was more or less a work that was carried on in conjunction to other matters of the same kind?

A. I was asked to carry on the research, and Goldberger carried on other work in prisons and insane asylums, as you know.

Q. And the work proceeded at the same time?

A. At the same time.

Q. Would you give a brief definition of pharmacology?

A. It is rather difficult to give a brief definition because it depends on the viewpoint you have, but I should say that broadly, from a broad scientific point of view, pharmacology is the study of the physiological action of drugs and chemicals on living organisms, and in relation to medicine it is a science which deals with the fundamental principles underlying the action of drugs on animals and man.

Q. What is metabolism, Dr. Voegtlin?

A. Metabolism, in simple language, is a science which studies the transformation undergoing in the body as a result of the intake of food and the changes which the food undergoes after it is absorbed, and the methods of elimination of waste products and the quantitative studies of these relationships.

Q. What do you understand by basal metabolism?

A. Basal metabolism is an arbitrary term, or unit you might call it. It is the energy output of an individual under standardized conditions, physiological conditions. That is to say, as a rule it always should be taken so many hours after the last meal has been taken and the patient, or the individual, to make it broader, should have been at rest, quiet, and by having studied a large number of individuals supposedly normal people there is arrived at a certain figure which has, of course certain variations, which are characteristic of all biological measurements which is considered as a normal metabolic rate as measured by the oxygen consumption and carbon dioxide elimination.

Q. How is that designated?

A. In a basal metabolic way.

Q. What are the factors designating it?

A. Normal being a hundred percent, and minus or plus so much, if there are any deviations.

Q. Now, I wish you would give a general description of the thyroid gland, and describe its location.

A. Thyroid gland is a small, relatively small, body, in front of the windpipe, two lobes, and connected by a bridge, supplied with blood, has a certain definite structure, physiological structure, it produces an active principle which contains iodine in a certain definite organic combination, and it is supposed, and there is good evidence to show, that the active principle of that gland is released continuously into the blood, and it is distributed to the tissues where it causes an acceleration of—causes oxidation to proceed. Oxidation, by that I mean the combustion of protein, carbohydrate and fat, which may come from the food or from the tissues themselves.

Examiner Norwood: Well, that process is not brought about by the iodine, is it?



The Witness: It is brought about by this particular form of iodine, thyroxin, a substance of definite chemical structure which has been isolated in pure form, crystalline, made synthetically. The only question which remains to be determined is whether this crystalline substance—is what sort of a combination it is in the thyroid gland or in the form in which it is released from the blood, probably a protein combination.

If you take out the thyroid completely, as can be done easily in animals, without removing the parathyroid gland, which are small glands imbedded in the thyroid, or, as happens sometimes in the clinic in goiter operation, where too much of the thyroid is removed to get what is called hypothyroidism, a deficiency function of the thyroid gland, lessened production and circulation of the active principle in the blood.

That condition has quite characteristic symptoms if it is an extreme case. It may not be so easily recognized when it is of a milder degree.

Examiner Norwood: That lessens metabolism?

The Witness: That lessens metabolism, which depresses all the normal functions. On the other hand, you have a condition which seems to be just the opposite, as far as you can tell, that's exophthalmic goiter which we may call hyperthyroidism, that is to say, probably an over functioning of the gland.

As with all glands of internal secretion, under normal physiological conditions, you have a marvelously regulated production and release of the active principles, and it is essential for the maintenance of health that we have this coordination and regulation of the products of internal secretion.

Mr. Gust: What is the question the Doctor is answering may I inquire? It seems to me—

Examiner Norwood: Please read the question.

(The last question was read by the Reporter.)

Examiner Norwood: That is the question. You may complete your explanation, if you have any further.

The Witness: If you like to hear it.

By Mr. Michael:

Q. All right.

A. Now it is recognized, has been for a long time, that if you have a deficient thyroid function, you can remedy this defect by feeding the thyroid. This is what is called substitution therapy, that is to say, to supply the gland made from domesticated animals, slaughter house animals, and feed it to the person who suffers from the deficiency. That, of course, requires controlled dosage, because under normal condition the body itself; the gland in the living body controls this output of the active principle and you can show that with proper dosage the symptoms of deficient thyroid function, myxedema as it is called, are improved in an astonishing way, but as soon, or soon after, when the thyroid administration is discontinued the symptoms gradually return again; in other words, it requires continuous administration of a given dose which will just fulfill the need of the individual suffering from this deficiency.

Q. Do I understand your statement to be that the administration of desiccated thyroid is supplemental, and that it does not affect the activity of the thyroid gland?

A. It is what we know, it is supplemental, it takes the same place as the principle secreted by the gland, because all the evidence presented shows that when you feed an active thyroid to a patient you remove the symptoms of the deficiency which existed.

Q. Does the thyroid gland show any increased activity under the effects of dosages of desiccated thyroid?

A. In what way?

Q. Well, does it show increased action and increased secretion under the administration of desiccated thyroid?

A. Not from the administration of the active principle of the thyroid.

Q. Did I understand you to state, in effect, Doctor, that the action of thyroid is directly upon the living tissues?

A. This matter is a very difficult one. We are poorly informed as to the exact mechanism of how the active principle of the thyroid causes this increase in the oxidation of individuals. That's a very complex question, and we certainly haven't the answer for it. All we can say is that when we give a certain dose of thyroid or thyroxin we get a certain percentage increase in the basal metabolic rate, and if we push it sufficiently we find that the patient, or the individual, doesn't have to be a patient; loses weight, provided he has not compensated the extra energy expenditure caused by the administration of the thyroid by the increased intake of food.

Q. Well, does the oxidation process of the body act upon tissues? In other words, in your previous statement I understood you to state that the action of the active principle of thyroid is upon the food and the tissues and fat of the body generally.

A. By that I want to qualify that, because it is not on the food in the stomach.

Q. All right, that's what I want.

A. What I meant to say is that it is an action confined to the tissues which under ordinary conditions utilize the digested absorbed food which is carried by the blood to the tissue.

Q. After it has been assimilated?

A. After it has been assimilated by the tissues, yes.

Q. Yes. Would you call desiccated thyroid, or thyroxin, a powerful drug in its action upon the human body?

A. It is a very powerful drug, unquestionably, because you take the active principle and a few millograms would produce a very marked effect; one millogram may produce an increase in the basic metabolic rate of two percent.

Mr. Gust. Is that thyroxin you are talking about?

The Witness: Yes.

By Mr. Michael:

Q. Now distinguish between thyroxin and desiccated thyroid, Doctor?

A. Desiccated thyroid is simply the gland desiccated free from connective tissue, fat, fat removed in suitable ways, and dried. In other words, it contains all the things that you find usually in the tissues, proteins and some carbohydrates and some salts, perhaps, small quantity, and besides, it has, as I said this active constituent which can be isolated by suitable chemical procedures. Then you can make that—they crystallize it by working up enormous quantities of the dried gland, you get a very small, but highly potent substance, which contains iodine in a very large amount, and which produces practically the same pharmacological action as the thyroid gland itself.

Q. Well, is that crystallized substance what is known as thyroxin?

A. Yes.

Q. Does it have the same active principle as desiccated thyroid when taken internally?

A. Well, it produces, as I said, it is difficult to say that it has exactly the same activity, it is in the same combination, undoubtedly needs thyroxin in the thyroid gland, in some form or other, in order to get the characteristic effect of thyroid.

Q. Well, do I have the idea, in lay language, that the thyroxin is a more highly concentrated product of the active principle of desiccated thyroid?

A. It is a pure product, pure chemical, as pure as it can be made; whereas, the thyroid is a crude product containing besides the active principle other things, like proteins.

Q. Is the general effect upon the body the same?

A. As I said, the general effect is the same, yes.

Q. It is just a mere difference in dosage?

A. Marked difference in dosage.

Q. Would the taking of desiccated thyroid, four doses a day, half grain a dose, for a continuous period of from four to six weeks, be such dosage of desiccated thyroid as to constitute a powerful drug?

Mr. Gust: I object to that form of question.

Examiner Norwood: The objection is overruled.

A. As I said, in such doses it would undoubtedly, in a good many individuals, produce a very powerful pharmacological action, not in all, but I should say in a good many of them.

By Mr. Michael:

Q. In your opinion, would such desiccated thyroid be safe for self-medication over a period from sixty to ninety days?

Mr. Gust: Same objection, I don't believe the witness has been qualified to give an expression of opinion on that.

The Witness: I am not a practicing physician—

Examiner Norwood: Wait a minute. The objection is overruled. Answer that to your own knowledge.

By Mr. Michael:

Q. Yes.

A. I can only answer this question not from the point



of having had experience in the practice of medicine, but from the scientific principles which are underlying the use of drugs.

Mr. Gust: And I object to the answer.

Examiner Norwood: Have you experimented on these animals with this thyroid or thyroxin?

The Witness: No, not with this particular compound, but I am familiar with the subject through a very careful study of the literature which I have kept track of for many years. I know the man who discovered thyroxin personally, he is a friend of mine—

Examiner Norwood: But you cannot answer that from your knowledge or scientific opinion based upon your experience can you?

The Witness: Not of my own experience, no.

Examiner Norwood: I will reverse the ruling and exclude that.

Mr. Michael: I am asking for opinion evidence on his study which he has already testified has been extensive on the subject—

Examiner Norwood: Yes, but he says that—

Mr. Michael: He has also testified that in his work, and the work of a pharmacologist, they teach doctors the use of drugs.

(There was a discussion off the record.)

Mr. Hornibrook: May I make a remark for the record? I just wanted to call Your Honor's attention to the fact that while the Circuit Court of Appeals in the old Raladam case did say that opinion evidence was not proper, yet the Supreme Court when the case came before them passed that point and said that if all that was necessary to sustain the contention of the Commission that this was dangerous, why then the case was made. And in the old case most of the testimony was based purely upon opinion testimony.

Examiner Norwood: Yes, well, that's all right, and you have some opinion testimony to that effect, if I remember rightly; but this witness says that he cannot answer that based on his own research, he says he knows a friend of his that has this, and has read about it and so on, but I think that he is barred from answering your particular question. As to any other particular question that you ask in the future I will rule on it.

Mr. Michael: May I make another remark on this, Mr. Examiner?

Examiner Norwood: Yes.

Mr. Michael: As I understand the situation, it is this, the Examiner holds that if a doctor of medicine, as I understand it—

Examiner Norwood: Yes.

Mr. Michael:—was on the stand, he could be asked for his opinion as to whether or not desiccated thyroid was dangerous for a person to take for self medication and that that opinion evidence would be competent regardless of whether the physician has ever administered a dose of thyroid himself or has ever conducted any experiments, that that opinion evidence would be based upon his study and his research in the literature of medicine.

Now, we have here a pharmacologist, and the pharmacologist teaches the doctors what they know about the effects of drugs. Now, isn't his opinion as to the effect of desiccated thyroid much more to be considered from his study of the subject than from a physician's study of the subject?

The Witness: You are right, Mr. Michael.

Examiner Norwood: That is true if this witness had not said that he could not from his own experience in research—

Mr. Michael: Except that you would allow the physi-

cian to testify under the same circumstances as to his opinion.

Examiner Norwood: I don't know.

Mr. Michael: Based on his reading and his study of the subject.

Examiner Norwood: I don't know that I have ever made a ruling on the set of facts that you have stated, and one ruling does not control another.

Mr. Michael: It is scientific opinion based on study, and here we have a witness who has made a lifetime study.

(There was a discussion off the record.)

Examiner Norwood: You can ask any other questions in the future and I will rule on them.

(The last question was read by the Reporter as follows: "In your opinion, would such desiccated thyroid be safe for self-medication over a period from sixty to ninety days?")

Examiner Norwood: Can you answer that based upon your scientific research?

The Witness: By scientific research I mean a thing that not only deals with what you do with your hands but with your head.

Examiner Norwood: Answer my question, though.

The Witness: Yes.

Examiner Norwood: Can you answer that?

The Witness: Yes.

Examiner Norwood: The answer is yes?

The Witness: On that basis.

Examiner Norwood: Yes.

The Witness: Of course, I have a different definition of scientific research.

Examiner Norwood: Well, now, you can ask him other questions.

The Witness: That's a matter of—I am speaking as a scientist; I am not speaking as a lawyer.

Examiner Norwood: Yes. He can give opinions based upon his scientific research.

(The last question was re-read by the Reporter as follows: "In your opinion, would such desiccated thyroid be safe for self-medication over a period from sixty to ninety days?")

Mr. Gust: Is that question being put?

Examiner Norwood: That question, in view of the witness' statement which he has since modified, I will rule out.

Mr. Michael: All right.

Examiner Norwood: But it appears that he can answer it from his own scientific research, and not what his friends said. If that is so, you can ask another question.

Mr. Gust: If the Court please, I did not understand the witness to say he could answer it except from something he has read or somebody has told him, and I object to interrogating the witness along these lines.

Examiner Norwood: There is no question pending at the present time.

Mr. Gust: All right.

By Mr. Michael:

Q. Dr. Voegflin, do I understand the fact to be that you have actual experimental knowledge with animals of the effect of hypothyroidism?

A. Yes.

Q. Do you also have some experience in experimental work with animals of the effect of hyperthyroidism?

A. No.

Q. Do you have actual experimental knowledge on

work with animals of the effect of the active principle of the thyroid gland on such animals?

A. No.

Q. Has your work in pharmacology and physiology included the study of the structure and function of the thyroid gland?

A. In what way do you mean?

Q. Your general work?

A. Yes, in a general way, of course.

Q. Did I understand you to say, in effect, in previous testimony, that the effect of dosages of desiccated thyroid is the same as the active thyroid secretion from the gland?

A. The dosage?

Q. The effect of the administration.

A. The effect, oh, yes, the effect is the same.

Q. Is the effect of hyperthyroidism due to an increased function of the thyroid gland dangerous to the human body?

Mr. Gust: I object to that, if the Court please, not having been qualified on that subject.

Examiner Norwood: The objection is overruled.

A. From a pharmacological point of view there is no question that an over-dosage of thyroid produces toxic symptoms in normal as in sick individuals.

By Mr. Michael:

Q. What different kinds of toxic conditions?

Mr. Gust: Same objection, if the Court please.

Examiner Norwood: The objection is overruled.

By Mr. Michael:

Q. Or affecting the body in what way?

A. Increase in basal metabolic rate, increase in heart activity, palpitation, nervous manifestations, dreams in some cases, disturbances in function of the liver, kidney, also in the function of the intestine.



Q. Do those results ensue from the taking of desiccated thyroid just the same as they ensue from hyperthyroidism?

Mr. Gust: I object to that, if the Court please, for the same reason that this witness has not been qualified, he has not testified that he ever observed any of these conditions in any human being, and he is simply testifying from something he has read in the literature.

Examiner Norwood: I think he is sufficiently qualified at this time; the objection is overruled.

Mr. Gust: I don't want to interrupt his examination at every question, and I would like to have that as a general objection to this course of the examination.

Examiner Norwood: Certainly. This witness has made a study of this very thing, as it appears.

Mr. Gust: I have read a lot of the literature myself, and I might say that I had made a considerable study, and still I don't claim to be qualified as an expert.

Examiner Norwood: You might qualify as an expert.

Mr. Gust: I don't claim it anyhow.

Examiner Norwood: Answer the question.

(The last question was read by the reporter.)

A. Yes, in a general way.

By Mr. Michael:

Q. Are there conditions of the human body that may exist in an individual as to make the administration of desiccated thyroid dangerous, or in which the existence of hyperthyroidism would be dangerous?

A. Yes.

Q. What are some of those conditions?

A. Heart disease, certain conditions, abnormality in the kidney function, liver function, certain persons who are mentally subject to the toxic—especially susceptible to the toxic action of thyroid over-dosage.

Examiner Norwood: Take a five minute recess.

(There was a short recess taken.)

Examiner Norwood: The hearing will come to order.

By Mr. Michael:

Q. Now, Doctor, basing your answer upon your studies, your reading of the literature on the subject, your experimental work with the thyroid gland, and its function, and taken in connection with your previous answer of the effect of hyperthyroidism, or the administration of desiccated thyroid upon the body, and upon certain diseased conditions which you mentioned, would you consider desiccated thyroid a dangerous preparation to be used for self-medication for reducing?

Mr. Gust: I object to that, if the Court please; the witness has not been qualified on that score.

Examiner Norwood: The objection is overruled.

A. Judging from scientific principles, I would say that it would be dangerous for a layman to take thyroid without consulting a physician to determine whether he needs a thyroid or not.

By Mr. Michael:

Q. Would its effect be such as to constitute danger to the patient for self-medication?

A. I can imagine certain individuals who would be affected in a very unfavorable way by such medication.

Q. How and might those instances be frequent?

A. That would entirely depend, or depend to a considerable extent, on the number of persons who take the thyroid, and their condition; whether they are especially susceptible to thyroid or not, how much they take, how often, for how long.

Q. Well, take a half grain of desiccated thyroid four times a day, over a period of sixty to ninety days?

Mr. Gust: Same objection.

Examiner Norwood: The objection is overruled.

A. The United States Pharmacopeia gives average dosage as half-a grain, two grains. Now, of course, that is simply an index of the order of magnitude of the dosage, but I should think the dosage mentioned by you, administered at the intervals you mention, over a period such as you mention, would be very likely to cause toxic manifestations in a fair percentage of the individuals. Again, the degree of those toxic manifestations would depend again upon the individual and the length of time he has taken the thyroid.

By Mr. Michael:

Q. Would such results, in your opinion, be such as to make it dangerous for a person to use such medication for the period stated?

A. I should say so, yes.

Q. As I understand your recital of your qualifications, Doctor, your work has been to a considerable degree in the field of metabolism and nutrition?

A. Yes, that's correct.

Q. In your opinion, what is the proper way to reduce?

Mr. Gust: Same objection, if the Court please; for the further reason, that it is incompetent, immaterial and irrelevant in this proceeding, this witness' opinion about—

Examiner Norwood: Can you answer that based on your scientific research and experience?

The Witness: If you mean by that, my knowledge?

Examiner Norwood: Yes.

The Witness: Of what is known about the—

Examiner Norwood: Have you made any experiments about other methods of reducing?

The Witness: No—

Examiner Norwood: I think we are getting out of the Doctor's range.

Mr. Michael: His special work has been in nutrition, metabolism, and he established the first laboratory for the study of metabolism in this country.

Examiner Norwood: Yes, his special work is telling us the effects, and the injurious effects and all other effects of this thyroid, and its effect on the human body; and I think unless he has had some experience, or made some scientific research as to the methods of reducing by the use of other things, or by the use of diets — if he has that experience he can answer that, if he has not, why I don't think he should.

Mr. Michael: I will ask a preliminary question.

By Mr. Michael:

Q. Doctor, in connection with your work, do you have actual experimental knowledge in the administration and the effect of diet?

A. Yes, both in animals and men.

Examiner Norwood: The objection is overruled to the previous question. Read the previous question.

(The previous question was read by the Reporter as follows: "In your opinion, what is the proper way to reduce?")

Examiner Norwood: You may answer that.

A. That would depend on the cause of the overweight. If that obesity is due to excessive food consumption, then the only scientific way of reducing is to cut down the food intake. If the obesity is due to a glandular deficiency, that would require different measures.

Should I elaborate on that?

Examiner Norwood: Go ahead, Doctor.

The Witness: The human body, as well as the animal

body, is like a machine. The energy is derived from the food we consume, the amount of it. It is burnt up to a certain degree under certain conditions. If you take an amount of food in excess of combustion which takes place in the body, then the body gains weight. If the individual takes less food than his energy requirements are, then he loses weight. The only scientific way of reducing, therefore, is to cut down on the food intake, so that it gets below the amount of energy which is set free by the body. In addition, exercise is of value, moderate exercise, depending on the person, but, of course, the difficulty is that most fat people do not have the will power to restrict their diet, they keep on eating the good things—I am one of those myself—have to watch.

Examiner Norwood: Doctor, suppose that the obesity is due to a deficiency of the thyroid gland?

The Witness: Then the proper—

Examiner Norwood: Treatment, is what?

The Witness: —treatment is thyroid or thyroxin.

By Mr. Michael:

Q. Is the condition of hypothyroidism such that a layman could distinguish that condition himself?

A. Very unlikely, unless he had studied the conditions and knew what the characteristic signs were, he would not recognize it, he would have to go to a physician.

Q. Are cases of hypothyroidism rare as compared with cases of obesity caused by overeating?

A. I don't think we have any accurate statistics on this question, as far as I know; but I should say that the vast majority of people who are abnormally fat are not cases where the thyroid is functioning in an abnormal way.

Examiner Norwood: But in the case of deficiency of the thyroid gland, doesn't that produce in most cases a



goiter condition, or the deposit of fat in a particular place?

The Witness: Yes, a goiter, that's again a little different thing. Of course, the endemic goiter, which we have in certain sections of the South, and Middlewest and Pacific Coast, that's a swelling of the gland which becomes very large. Very often they have marked symptoms of rather below average intelligence; it is supposed that this is due to a deficiency of the iodine in the food and drinking water, and attempts have been made on a large scale to correct that by putting iodine in with the salt, table salt. Of course, I should say even including those cases the obese persons, due to abnormalities in the function of the thyroid gland, would be a relatively small percentage of the total number of fat people.

(There was a discussion off the record.)

By Mr. Michael:

Q. Dr. Voegtlin, I will now read to you the formula of a preparation known as Marmola:

1 grain, Extract Bladderwrack;  $\frac{1}{2}$  grain, Extract Phytolacca;  $\frac{1}{4}$  grain, Extract Cascara Sagrada, Rx. 87-Spec.;  $\frac{1}{2}$  grain, Desiccated Thyroid; 16/1000 min., Oleoresin Ginger, Po. Saccharum special; 3 grains Calcium Carbonate Precipitated;  $\frac{1}{24}$  min., Methyl Salicylate;  $\frac{1}{24}$  min., Oil Anise;  $\frac{1}{24}$  min., Oil Sassafras; Talc Brown; Ivory Black; Aqua for Extracts; Po. Burnt Umber; Red Oxide of Iron; Syrupus Simplex; Lubricating Solution; Aqua for Granulating; Liquid Petroleum colorless.

And ask you to examine it and state whether or no, in your opinion, there are any ingredients therein which would cause reduction of the human body other than desiccated thyroid?

A. No, I think the desiccated thyroid in this preparation is the one drug which may cause reduction of weight.

Q. Addressing your answer to the formula that I have just stated, I wish you would state what, in your opinion, are the therapeutic properties of that preparation?

A. You mean each individual item, or as a whole?

Q. The entire preparation.

A. The whole?

Examiner Norwood: Yes.

A. I would say it would have the effect of a therapeutic action, pharmacological action, of one-half grain of desiccated thyroid, provided that the desiccated thyroid is of the usual quality specified by the Pharmacopeia.

Q. And which would be what effect?

A. Which would be affecting the basal metabolic rate, causing all the other actions that the thyroid normally has.

Q. Now, are there ingredients in that formula that I have just stated that have other therapeutic effects?

A. Yes, there is some cascara, mild laxative, there is anise, and such things such as flavorings, calcium carbonate, well, that is just supplying calcium and acts as a mild alkali, and there is an obsolete drug there, bladderwrack, that used to be used for treatment of various conditions, supposed to have a lot of iodine in it, it is a sea plant, but it is no longer in the Pharmacopeia, I don't think it is of any particular value. Ginger, and other things, sugar, and po. saccharum. The main activate is the thyroid.

Q. Plus a laxative effect?

A. Plus a slight laxative effect from the cascara, may or may not.

Mr. Michael: That is all.

## Cross Examination

By Mr. Gust:

Q. Doctor, do you practice medicine?

A. No.

Q. You have not a license to practice medicine?

A. No, no.

Q. So you don't treat anybody for anything?

A. Well, no.

Q. Well, as I understand it, Doctor, then, you have never treated any patients for either obesity or any other disease is that right?

A. I have made recommendations to some physicians which were kindly taken and—

Q. I mean to say, you don't do it yourself?

A. No, I don't.

Mr. Gust: That is all.

## Re-direct Examination

By Mr. Michael:

Q. Doctor, in your work in metabolism and nutrition, and in instructing and studying the effects of medicines, has your work been in hospitals where licensed physicians have administered drugs under your supervision?

A. Yes, both at Johns Hopkins Hospital, where I had a laboratory right in the Hospital, and in South Carolina where I was engaged in some work on pellagra.

Q. In your work and experience have you advised physicians as to medication to be used by them?

A. I have.

Q. Quite extensively?

A. Very.

Mr. Michael: That is all.

Mr. Gust: That is all.

Examiner Norwood: Thank you, Doctor.

(Witness excused.)

Mr. Michael: May we have a recess of about five minutes?

Examiner Norwood: Certainly.

(There was a short recess taken.)

Examiner Norwood: The hearing will come to order.

J. L. GUNDLING, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Hornibrook:

Q. State your name.

A. J. L. Gundling.

Q. Mr. Gundling, where do you reside?

A. 2818 Lawrence Street, Northeast.

Q. What is your occupation?

A. Buyer of Peoples' Drug Stores.

Q. How long have you been connected with Peoples' Drug Stores?

A. Twenty years.

Q. How many drug stores do they have?

A. 124.

Q. How many of them are in the District of Columbia?

A. 36.

Q. And the others are located where, just approximately, in Maryland?

A. Maryland, Virginia, Tennessee, Ohio, West Virginia, New Jersey, Delaware.

Q. And they sell drugs, do they?

A. Yes.

Q. As buyer, are you familiar with the stock that the Peoples' Drug Store carries for the purposes of supplying these different stores about which you have testified?

A. Yes.

Q. Do the Peoples' Drug Stores engage in jobbing at all?

A. No.

Q. Sell only to their own people?

A. Only to their own stores.

Q. What, if any, anti-fat treatments or remedies do the drug stores of the Peoples' Company carry?

A. You will have to put that question differently for me to answer that.

Q. Well, do you carry Marmola?

A. Yes.

Q. Do you carry desiccated thyroid?

A. Yes.

Q. Whose desiccated thyroid do you carry?

A. Armour & Company, and Burroughs-Wellcome.

Q. Armour & Company are of Chicago?

A. Yes.

Q. And Burroughs-Wellcome are where?

A. New York.

Q. Do you carry Welch's grape juice?

A. Yes.

Q. What other anti-fat remedy or treatment do you carry? Well, do you carry Bon Kora?

A. Yes.

Q. Was that used in the treatment of obesity?

A. All I can say, their advertising recommends it for obesity.

Q. You have seen their advertising?

A. That's right. We don't recommend any of them;



we carry the supply for the consumer, let them make their own demands.

Q. But their advertising recommends it as a treatment for obesity?

A. That's correct.

Q. Where are they located?

A. At Battle Creek, Michigan.

Q. You carry that in stock?

A. Yes, sir.

Q. What is this package I now hand-you (indicating)?

A. A package of Bon Kora.

Q. Would you read the printed matter appearing on the side of it here, under the head "Bon Kora treatment"?

Mr. Gust: Is that offered in evidence?

Mr. Hornibrook: No.

Mr. Gust: Well, then I object to his reading from it; I think it ought to be put in evidence.

Examiner Norwood: The objection is sustained.

By Mr. Hornibrook:

Q. I will ask you to read it, but not in evidence, and then I will ask you another question.

A. "Bon Kora"—

Mr. Gust: Wait a minute, you mean read it to himself?

Mr. Hornibrook: Yes.

The Witness: Pardon me.

Mr. Gust: He wants you to read that to yourself.

Examiner Norwood: He can use it to refresh his memory, if he has ever seen it before.

Mr. Gust: I thought, if the Court please, that only documents that have been prepared by the witness were proper to refresh his memory, I did not understand—

Examiner Norwood: I thought he testified that he sold that, bought it and handled it.

By Mr. Hornibrook:

Q. Have you read it?

A. Yes, sir.

Q. You say you know that it is advertised as a treatment for obesity; is that a fact?

A. Yes, it has been advertised, yes.

Q. After reading what appears on the side of the package, I will ask you to state whether or not it is not sold as an efficient eliminant of waste matter?

Mr. Gust: I object to that, if the Court please. It is just obviously a method of attempting to have this witness say what is on this package. If the Government wants that in evidence, I think they should put it in evidence.

Examiner Norwood: Did you know when you bought and sold this what the uses were? Prior to reading that, did you know what this was bought for, and what the trade buys it for, and what you sell it for?

The Witness: When we buy merchandise to supply it to the trade, why, we take nationally advertised—we don't handle it unless the manufacturers are advertising it and creating the demand.

Examiner Norwood: Yes, but did you know before you read that on the paper there what the uses were?

The Witness: Yes, I knew what the use was recommended for.

Examiner Norwood: Well, you can testify as to the purposes for which you bought and sold it, and the fact that you refreshed your memory from that printed matter on the package wouldn't change that at all.

A. The purpose I bought it for was to supply consumer demand as created by the manufacturer.

Examiner Norwood: We are trying to find out the purposes for which your customers buy it.

The Witness: The purpose for which our customers buy it, to the best of my knowledge, was for reducing weight.

(There was a discussion off the record.)

By Mr. Hornibrook:

Q. One more question, do you handle Welch's grape juice?

A. Yes.

Q. Another question to follow that: Do you know whether or no that is sold in connection with the treatment for obesity?

A. I will have to answer the same way I did on the Bon. Kora.

Q. How did you answer that? Is it advertised?

Mr. Gust: I object to that; their advertising is the best evidence, Your Honor.

Examiner Norwood: He can tell whether or not this was recommended and sold for the purposes of reducing if he knows that. Do you know that, whether it is or not?

The Witness: It was on the radio, yes.

Examiner Norwood: The objection is overruled.

Mr. Hornibrook: That is all.

### Cross Examination

By Mr. Gust:

Q. You mean that Welch's Grape Juice Company advertised on the radio that the taking of Welch's grape juice would remove excess fat from the human body?

A. No.

Q. Or would correct obesity, be a remedy or treatment for obesity?

A. No.

Q. The only advertising was to the effect that if you did not eat so much, and drank Welch's grape juice instead of eating, that you might lose weight, is that right?

A. That's right.

Mr. Gust: Now, I will ask to have that marked.

(The package referred to was marked "Respondent's Exhibit No. 12" for identification.)

By Mr. Gust:

Q. (Indicating) I show you this package, which has now been marked Respondent's Exhibit 12 for identification, and which is apparently a carton of Bon Kora, and ask you if that is the same carton that was shown to you by the Government attorney a few minutes ago?

A. Yes.

Q. As I understand it, you buy merchandise for resale only, is that right?

A. That's right.

Q. And you buy such merchandise as the public calls for?

A. Yes, sir.

Q. What the public does with your merchandise after they buy it, you, of course, don't know, is that right?

A. Yes, sir.

Q. And you don't know whether people buy Bon Kora because it contains 60 per cent alcohol or because they want to use it for some other purpose, do you?

A. No, sir.

Q. Now, you said that you had seen some Bon Kora advertising; did you mean on the package, or newspaper advertising?

A. Newspaper advertising?

Q. Have you seen any in the last two or three years?

A. Within the last two years, yes.

Q. You think it is about two years ago, the last advertising?

A. Yes, sir.

Q. You say that you handle Armour & Company's thyroid preparation?

A. Yes, sir.

Q. And that is dispensed over the counter without the prescription, is it not?

A. Yes, sir.

Q. And that is the same way with Burroughs-Wellcome?

A. Yes, sir.

Mr. Gust: I will offer Respondent's Exhibit 12 in evidence.

Examiner Norwood: Any objection?

Mr. Hornibrook: There is no objection. You offer the whole contents, and the reading matter, and everything in this, do you not?

Mr. Gust: I haven't opened it. Yes, I will offer it all.

(There was a discussion off the record.)

Examiner Norwood: The carton is received as Respondent's Exhibit 12-A, the bottle and contents received as Respondent's Exhibit 12-B, and the one sheet of printed matter wrapped around the bottle is received as Respondent's Exhibit 12-C.

(Whereupon the items heretofore mentioned and marked Respondent's Exhibits 12-A, 12-B, and 12-C, for identification, were received in evidence.)

Mr. Gust: That is all.



## Re-direct Examination

By Mr. Hornibrook:

Q. One other question,—you testified, as I understand you to say in answer to counsel, that Armour's thyroid was for sale, and Burroughs-Wellcome thyroid was for sale to the laity, without a doctor's prescription?

A. Yes.

Q. Are they not also on sale to the laity upon the doctor's prescription?

Mr. Gust: I will concede that this man will give a patient anything the doctor writes out a prescription for.

Examiner Norwood: Does the prescription department use some of these things and make them up into prescriptions on doctors' directions?

The Witness: Thyroid?

Examiner Norwood: Thyroid.

The Witness: Yes.

Mr. Hornibrook: That is all.

Mr. Michael: May I ask a question to clear up the matter?

Examiner Norwood: Yes.

By Mr. Michael:

Q. Armour's thyroid preparation and also Burroughs-Wellcome thyroid preparation which you have testified are on sale in your drug stores, are sold on doctors' prescriptions?

A. Yes.

Q. And also to the laity if they want to call for them by name?

A. Yes, sir.

Mr. Michael: That is all.

(There was a discussion off the record.)

(Witness excused.)

Examiner Norwood: We will recess until two o'clock.  
(Whereupon at 12:10 o'clock p. m., a recess was taken  
until 2:00 o'clock p. m.)

### AFTERNOON SESSION

2 P. M.

Examiner Norwood: The hearing will come to order.

DR. HARRY FILMORE DOWLING, was thereupon  
called as a witness for the Commission and, having been  
first duly sworn, testified as follows:

### Direct Examination

By Mr. Michael:

Q. Give your name to the reporter.

A. Dr. Harry Filmore Dowling.

Q. Dr. Dowling, how old a man are you?

A. 31.

Q. What is your profession?

A. Doctor of medicine, physician.

Q. Where do you practice?

A. In Washington, D. C.

Q. And your address is what?

A. 2111 Bancroft Place.

Q. Are you connected with a medical school in any  
capacity?

A. I am clinical instructor of medicine at the School  
of Medicine, George Washington University.

Q. How long have you been such instructor?

A. About one and a half years.

Q. When did you graduate from George Washington?

A. In medicine in 1931.

Q. Just go into your background, Doctor, and tell us

what schools you have attended and what classes you have taught, if any, and where?

A. After graduating from the George Washington University I became interne in medicine on the Johns Hopkins Service at the Baltimore City Hospital, and following that I was assistant resident in medicine on the same Service, and assistant in medicine on the faculty of the Johns Hopkins Medical School. Following that I was at the Boston City Hospital as teaching Fellow in medicine of the Harvard University, and following that I came to Washington to practice medicine, and became director of the Central Laboratory of the George Washington University Hospital and clinical instructor of medicine at that University.

Q. Are you such director at this time?

A. At the present time.

Q. And you are in the general practice of medicine here in Washington?

A. Yes.

Q. What, if any, subjects have you specialized in?

A. Why, I have specialized in the subject of medicine as distinguished from surgery and maternity work, and diseases of that kind. We call that internal medicine as opposed to those others, and I have done special research work in infectious diseases.

Q. Have you made any special study of the thyroid gland?

A. Not at any time, any experimental studies, but I have worked a great deal on patients with thyroid disorders.

Q. Have you had any clinical experience with reference to the thyroid gland?

A. I have seen a great many patients with both hyper and hypothyroidism.

Q. You have observed them?

A. And I have observed them and treated them.

Q. Treated them?

A. Yes.

Q. In clinic and out?

A. Yes.

Q. Are you familiar with the drug known as desiccated thyroid?

A. I am.

Q. Have you used it?

A. Yes, I have.

Q. I want you to go into your experience with desiccated thyroid.

A. I have used the drug on patients that have been treated by me after they have had a preliminary examination including one or more basal metabolic rate determinations and have observed their progress, checking it by such examinations and by other clinical examinations, and on one occasion I used it on myself because I had found that I had a lower basal metabolic rate over the average for my age and weight and height, and after four such determinations on myself I decided to take, under supervision of another physician, a small amount of thyroid, of desiccated thyroid.

I took one grain per day for about one week, and had such untoward symptoms that I reduced the dose to one-half grain, which I then kept up for several months, under the guidance of the other physician. The untoward symptoms that I had at that time were flushing of the face and palpitation of the heart, and I found that both my pulse rate and my temperature were elevated over the normal.

Q. Were those symptoms that developed with you symptoms of hyperthyroidism?

A. Yes, I am quite sure they were.

Q. What causes obesity, generally?

A. In many cases we do not know but we feel that in a large number, perhaps in the majority of cases, it is a constitutional—it is an inherited characteristic, and, therefore, one for which we have very little background, we have very little reasoning. In some cases, however, it is probably due to overeating, over indulgence in food, especially food of a high caloric value, and reduction of exercise in some cases. It is probably due to dis-function of some organ, particularly of the endocrine organs.

Q. Those first two you spoke of, that is, an inherited condition and the condition of obesity due to overeating, what is the proper treatment for those?

A. In the constitutional type there is probably very little that can be done, perhaps a reduction in diet within certain limitations would help. In a type in which there is an over indulgence of food, the obvious treatment is to decrease the food within the limits allowed by the necessity of that person, for an adequate caloric intake, and also to increase the exercise.

Q. There is a class of obesity due to hypothyroid, is there not?

A. There is.

Q. Is it not a fact that that is the only type that can properly be treated by the thyroid?

A. Yes, that is the only type that I would venture to use thyroid in.

Q. What does the literature of the profession say about that?

Mr. Gust: I object, if the Court please; the literature is the best evidence.

Examiner Norwood: What is your opinion based on your studies?



Mr. Michael: I was going to ask him about his opinion based on his studies and his experience later.

Examiner Norwood: The objection is sustained to the form of the question.

By Mr. Michael:

Q. Based upon your clinical experience and your experience in the practice of medicine, and upon your study and research, what is your opinion of the proper treatment for obesity, other than that which manifests itself by hypothyroidism?

A. The proper treatment is to find the cause, if possible, and to treat it, especially if it is a question of dietary reduction. I would not use desiccated thyroid in such a case, because it is in no way indicated.

Q. What is the fact, Doctor, as to whether or no obese people are subject to hyperthyroidism?

A. In some cases obese people do have hyperthyroidism.

Q. In such cases as that the administration of desiccated thyroid is not proper?

A. It would be decidedly disadvantageous.

Q. And as where the thyroid gland is affected in some way, and the patient is put upon treatment by desiccated thyroid, does that restore the gland?

A. It does just the opposite.

Q. What does the thyroid do?

A. To the body in general, you mean?

Q. Yes.

A. It increases the metabolism of all tissues with which it comes in contact, and causes them to work at a higher speed. Their metabolism is increased, and that includes their intake of food and their output of energy, the heart muscle is affected along with the other tissues and it is

in that that the deleterious action particularly rests, because heart muscle when it is overworked to such a degree as the thyroid is likely to overwork it, first hypertrophies or increases in size in order to do the increased work, and when it can no longer increase its size it begins to fail in its work, and then we have the situation known as heart failure, which becomes progressively worse and finally leads to the death of the person.

Q. Are there other organs in the body that are affected by overdoses of thyroid?

A. All the organs of the body are affected; but we do not have clear cut sequence of events in those cases as we do in the case of the heart. There are probably injurious effects of the overwork of those organs too, but we do not know enough about them yet. We do know, however, that there are varying unpleasant symptoms which occur from overworking all of these.

Q. May not a person take overdoses of thyroid and feel no particular ill effect upon the heart, or the kidneys, or the liver, or whatever the organ may be, and yet in time those organs, or one of them, will develop such bad results or bad effects due to the taking of that overdosage of thyroid?

A. It is very likely that he will feel no ill effects at first, especially if he knows nothing about what he is taking, or if he knows nothing about the properties of what he is taking; but it is almost certain that he will feel ill effects later before the final outcome, but by that time irreparable damage will undoubtedly have been done.

Q. Are there not cases where the metabolic rate is apparently normal, and yet the subject, the patient, is very susceptible to thyroid and may become toxic more readily than others?

A. If I understand you correctly, you say cases in which the metabolic rate is normal?

Q. Yes.

A. And yet they are susceptible to thyroid?

Q. Toxic poisoning, yes, through the thyroid.

A. Well, every person who has a basal metabolic rate which is normal will get ill effects from the taking of thyroid, and some people will get them sooner than others.

Q. Can the laity tell whether or no they are a fit subject to take thyroid?

A. It is absolutely impossible.

Q. When is the administration of thyroid permissible?

A. Only after the patient has had a careful examination including one or more basal metabolic determinations, and under the supervision of a physician who is competent to treat such diseases.

Q. Otherwise it would be dangerous to take it?

A. I would say it would be very dangerous.

(A short recess was taken.)

(Whereupon a certain document was marked "Commission's Exhibit 9," for identification.)

By Mr. Michael:

Q. I will ask you to read Commission's Exhibit No. 9, marked for identification; have you read it, Doctor?

A. I have.

Q. Being the purported formula of Marmola; have you read it?

A. I have.

Q. I will ask you what, if any, ingredient in there is useful in the treatment of certain types of obesity?

A. The extract of cascara sagrada might be termed useful, because it has a slight action upon the bowels, and might eliminate food before it was absorbed from the in-

testine, and the desiccated thyroid would be of some value in the type of obesity which is due to hypothyroidism.

Q. Only?

A. Only.

Q. Is there any other laxative in that formula?

A. The liquid petroleum has a laxative effect, especially if used in fairly large quantities.

Q. I will ask you, Doctor, if those two laxatives in the quantities as indicated there in that formula, together with another laxative, if taken four times a day for a period of from 60 to 90 days, whether or no, in your opinion, that would be apt to create a laxative habit?

A. I think that it would be very likely to create such a habit.

Q. Would you say that those three types of laxative were proper treatment for obesity?

A. No, because although they eliminate food, the proper treatment would be not to take the food in the cases where there is too much food, and because they would tend to create a dangerous habit in addition to any possible usefulness that they might have.

Q. As to the other ingredients, other than the two laxatives that you have mentioned, and the desiccated thyroid, is there any potency in the treatment of obesity in any of the others?

A. I can't see any potency that they would have.

Q. The desiccated thyroid as indicated there is how much?

A. One-half grain.

Q. To each tablet?

A. To each dose, to each tablet, yes.

Q. Now, Doctor, basing your answer upon your studies, and your experience, clinic and otherwise, I will ask you

to state whether or no the taking of these tablets containing one-half grain of desiccated thyroid, four times a day, for a period of 60 to 90 days, would be dangerous to the life or the health of the patient so taking it?

A. It would.

Q. Upon what do you predicate your answer to that?

A. In the first place, assuming that the patient did have hypothyroidism, and that that was the cause of his obesity, the dosage is not regulated in any definite manner, and is likely to be too much for the patient even if he did have a lower basal metabolic rate, as I have said before. In the second place, a great majority of the patients who are obese do not have a lowered metabolic rate, and therefore, the thyroid would be definitely contra indicated. In addition, there is the presentation of the two cathartics which might have a deleterious effect in creating a laxative habit.

Q. Doctor, will you explain the term, for the benefit of the record, contra indicated?

A. Whenever we feel that a drug is of value in the treatment of a condition we say that it is indicated, and when we feel that it would not be of value, or particularly that it would be deleterious, we say that the drug is contra indicated.

Q. Doctor, when is an individual overweight?

A. That is a more or less arbitrary matter, because the only method of measurement we have is to take the average of other persons of the same age and height and compare the persons' weight in question with that average. Such figures are after all, only averages, and we know that human beings do not conform to averages in any of their biological measurements.

Q. Assuming, Doctor, there is true obesity, should all of these people reduce?



A. I think that it is highly inadvisable for the majority of people who are overweight to reduce, because in most cases it is an inherited tendency which cannot be influenced by any method of treatment, and the person might be injured in the attempted treatment.

Q. There is a vast difference in the natural build and stature of people, is there not?

A. There is.

Q. They might be in good health and perfectly normal, and yet if they started to reduce by the use of desiccated thyroid it might develop into ill health, is that a fact?

A. That is correct.

Q. Does desiccated thyroid always cause weight reduction?

A. No, it does not; it will cause weight reduction sometimes in patients who have hypothyroidism, and not in every case of that within reasonable doses; in other types of obesity it will very seldom cause weight reduction.

Q. Is the basal metabolism of obese people usually sub-normal?

A. No, it is usually normal within normal limits, only in a small percentage of cases is it sub-normal.

Q. Assuming that desiccated thyroid causes weight reduction in a particular case, is it a cure for obesity?

A. No, it is not a cure because even in the cases in which it is indicated it is only supplying a deficiency and when the supply is stopped the original condition returns.

Q. Have you observed, Doctor, other cases of deleterious effect from the taking of thyroid?

A. I have.

Q. Would you go into that in detail, please?

A. I have seen cases in which under supervision thyroid gland, desiccated thyroid gland, had been given, and the patients exhibited the symptoms of increased metabolic rate and also had the increased metabolic rate above the normal limits upon test; they exhibited also symptoms of rapid heart rate; increase in temperature above the normal limits, and flushing of the face, nervousness and insomnia. These symptoms subsided upon stopping the use of the thyroid gland. I have seen other patients in which the thyroid substance had been taken over a longer period of time, not under the supervision of a physician, and there was definite enlargement of the heart which could not be attributed to any other cause than the taking of the thyroid gland.

Q. In your own case, as I understood your testimony, Doctor, had you reduced the amount of thyroid you were taking from one grain a day to half?

A. Yes, that's right.

Q. When you brought about that reduction in the amount of thyroid that you consumed, did your symptoms leave?

A. The symptoms disappeared, and my basal metabolic rate has remained within normal limits upon the taking of that amount.

Mr. Michael: I offer this in evidence as Commission's Exhibit No. 9.

Examiner Norwood: Any objection to this?

Mr. Gust: No objection.

Examiner Norwood: It has been read into the record time and again, the formula of Marmola, previously marked Commission's Exhibit 9, for identification, and is now received in evidence as Commission's Exhibit 9.

(Whereupon the document heretofore marked Commis-

sion's Exhibit No. 9, for identification, was received in evidence.)

### Cross Examination

By Mr. Gust:

Q. Doctor, you say you graduated in 1931?

A. Yes, sir.

Q. Did you commence private practice immediately thereafter?

A. I practiced medicine in hospitals immediately thereafter; not as a ~~private~~ practitioner.

Q. When did you commence practicing as a private practitioner?

A. September 1, 1934.

Q. Do you treat obesity?

A. I do.

Q. How many cases of obesity have you treated in your life?

A. It is difficult to say exactly.

Q. I don't ask for that.

A. But about fifty.

Q. About fifty?

A. Yes.

Q. Did you treat any of them with thyroid?

A. I did.

Q. About how many?

A. Three cases.

Q. Did you treat all the rest of them with diet?

A. I treated—yes, I gave them all a diet in an attempt to treat the obesity, but in every case it was not successful.

Q. Did you ever use any other internal medicant except thyroid?

A. Not in the treatment of obesity.

Q. That is what I mean.

A. No.

Q. Do you have a basal metabolic machine?

A. I do.

Q. Do you have an open or closed circuit?

A. A closed circuit.

Q. Have you ever prescribed thyroid for any other condition besides obesity?

A. I have prescribed thyroid for hypothyroidism, and it was found in persons who did not have obesity but had other conditions, whether it was associated with those conditions or not it would be difficult to say.

Q. Did you ever prescribe it for any other bodily condition?

A. I prescribed it for hypothyroidism.

Q. I understand that, but any other bodily condition?

A. No.

Q. Except hypothyroidism?

A. No.

Examiner Norwood: Well, hypothyroidism that means the subnormal functioning of the thyroid gland?

The Witness: That's right.

By Mr. Gust:

Q. What other conditions does it indicate?

A. No others that I know of.

Q. That is the only condition that you know of that thyroid medication is indicated, is when the patient is suffering from hypothyroidism, is that right?

A. That's right.

Q. You never heard of it being prescribed for any other internal ill?

A. I have heard of it.

Q. Being prescribed?

A. For other conditions.

Q. What conditions?

A. I have heard of it being used in a treatment of arthritis.

Q. By physicians?

A. By physicians.

Q. Do you disagree with that?

A. I disagree with that treatment, unless there happens to be an associated lowered basal metabolic rate.

Q. Have you heard of it being prescribed in any other conditions?

A. No, I have not.

Q. Didn't you ever hear of it being prescribed for skin diseases of any sort?

A. No, not unless it were associated with lowered basal metabolic rate which sometimes carries with it a change in the skin.

Q. But you never heard of it used in skin conditions where no hypothyroidism was present?

A. No, I have not.

Q. I take it, Doctor, that you subject all your patients who come to you for obesity to a basal metabolic test?

A. I do.

Q. Do you regard it as an essential in your practice to do that?

A. As an essential in the treatment of certain conditions including obesity.

Q. Well, I mean—

A. Yes.

Q. We are speaking of obesity. You regard that as an essential thing to do, do you?



A. I do.

Q. Do you regard it as being unsafe to attempt to prescribe for that patient without giving him a basal metabolic test?

A. It is unsafe to prescribe certain things. It is not unsafe to prescribe a lowered diet, if he has not done the basal metabolic rate, but it is unsafe to give him thyroid extract, for instance, if you have not taken the test.

Q. You mean it is unsafe for the doctor to give thyroid extract unless he has a basal metabolic test of the patient?

A. I think so.

Q. What other internal medicants do you feel that way about?

Mr. Michael: I object to the question.

Examiner Norwood: Overruled.

A. I don't think that—

Mr. Gust: If there is any doubt about it I will withdraw it.

Examiner Norwood: There is no doubt about it.

Mr. Gust: I will withdraw it any way.

By Mr. Gust:

Q. Does ingestion of food cause a metabolic rate to rise?

A. It does.

Q. Particularly protein?

A. Particularly protein.

Q. How much of a rise in the metabolic rate have you seen accompanying ingestion of, say, an ordinary meal?

A. I haven't seen it, because I have never done the basal metabolic rate after a meal.

Q. You never have?

A: It is not the time.

Q. It would be the time if you wanted to find out how much that patient's metabolic rate was increased by the meal, wouldn't it—that would be the time to take it, then?

A. It would be.

Q. Yes. And you have never taken it under those circumstances, is that right?

A. I have not.

Q. You say you had a closed circuit machine to take it, did you?

A. Yes.

Q. And that measures the amount of oxygen consumed, doesn't it?

A. It does.

Q. Is that all it measures?

A. It measures the rate at which it is consumed also.

Q. Does it tell you how much heat is produced in the body?

A. No, it does not.

Q. Is there a machine that would do that?

A. Yes, there are machines which will do that which are rather large and elaborate and found only in large research institutions.

Q. Is that what we refer to as an open circuit machine?

A. I am not familiar with that terminology.

Q. That terminology?

A. As applied to that.

Q. I see. What does this other machine, which you say is rather large and costly and found in research laboratories, tell you with respect to the metabolism that is not told to you by this closed circuit machine?

A. It will tell me more definitely the exact metabolism, because it measures everything that is going on as far as it is possible for us to measure it.

Q. Yes?

A. However, the machines that are in ordinary clinical use will tell those things, because tables of figures have been worked out by men working with these larger machines telling what certain measurements are upon people of a given age, weight and height.

Q. Is it of any interest to you to know how much heat is being produced by the patient?

A. It is not necessary when the clinical machine is adjusted correctly, and when the figures are followed which have been found out on these larger machines.

Q. Does this machine tell you anything about the relative amount of protein metabolism or carbohydrate metabolism, or meat metabolism, that is going on in the body?

A. It does not.

Q. I take it, Doctor, that after you examine your patient you still don't know whether or not that particular patient may or may not be peculiarly sensitive to thyroid medication, do you?

A. That's correct.

Q. The only way that can be determined is to give the patient the medication and observe results?

A. Yes, in small doses.

Q. Well, you can observe it, you don't need to add that, you can observe it if you give it in large doses, can't you?

A. It would be dangerous.

Q. Yes, but you could still observe?

A. Yes, I thought—

Q. And find out whether or not he was sensitive whether you gave him small or larger, couldn't you?

A. You are quite right; I thought you meant—

Q. All right, I quite understand your antipathy towards this situation but you don't need to volunteer on every occasion.

Mr. Michael: I think your question is—

Mr. Gust: I think that is a purely voluntary statement by this witness.

By Mr. Gust:

Q. Do you know of any internal medicant that can be given to obese people, except thyroid, for the purposes of reduction?

A. I know of medicants which have been given and which seem to have good results in some cases.

Q. For instance?

A. Dinitrophenol, for instance.

Q. Do you regard that as safe for self-medication?

A. No, it is not.

Q. Do you regard it as more unsafe than thyroid?

A. Yes.

Q. Do you know of any other internal medicant that is prescribed by doctors?

A. No.

Q. Other than thyroid and dinitrophenol?

A. No, I don't.

Q. Do you know of any that are effective in reduction of obesity, other than thyroid and dinitrophenol?

A. No, I don't.

Q. Doctor, I take it that the first symptoms which are observed from excessive doses of thyroid are rapidity of the heart, nervousness, perspiration, sweating, is that right?

A. Yes, those are usually the first symptoms.

Q. Those are the first symptoms. And, if the medication is discontinued as soon as those symptoms appear, the symptoms would subside, wouldn't they?

A. They will unless the medication has been kept up for a long time, then there is—

Q. If the medication is discontinued as soon as the symptoms appear won't the symptoms subside in a few days?

A. It is possible that the symptoms might not appear, or might not be noticed for a long time, but—

Q. I didn't ask you that, Doctor. I asked you if the thyroid medication is discontinued as soon as the symptoms appear—

A. I understand what you asked; but I am trying to say that there may be an occasional case in which they will not appear soon enough for the discontinuance to stop the symptoms.

Q. I see, all right. You think there might be an occasional case of that sort?

A. Yes, there might be.

Q. I see. What is the dosage of thyroid that is given in the United States Pharmacopeia?

A. I am not sure of it, but I think it is one grain.

Q. What is the dosage of cascara sagrada that is given in the United States Pharmacopeia?

A. Extract of cascara sagrada is five grains.

Examiner Norwood: Is that per day?

By Mr. Gust:

Q. That is per dose, is it not, Doctor?

A. That's per dose.

Q. To be repeated as often as the doctor may determine?

A. That's correct.

Q. Would you class cascara as a mild laxative?

A. I would.

Q. Would you refer to it as a tonic laxative?

A. No, I don't think there is any such thing as a tonic laxative.



Q. If there was one, cascara would be as near it as any of them, wouldn't it? Maybe that is a bad question. Have you heard it referred to as a tonic laxative?

A. No, I have not.

Q. I take it that exercise would increase the metabolic rate, will it not?

A. It will.

Q. I take it that sunshine increases metabolic rate, does it?

A. It may, it may have some effect upon it.

Q. How about mental conditions? Well, have you observed that that had an effect on it?

A. That will decidedly change it.

Q. When you say decidedly, what increase in metabolic rate have you observed that you attributed to the mental condition of the patient?

A. I have seen an increase of 20 or 30 above the figure which was gotten at the time when the patient was not excited emotionally.

Examiner Norwood: That is in the increase of the rate?

The Witness: Above.

Examiner Norwood: Yes.

By Mr. Gust:

Q. In other words, when the patient was not under this mental strain and you got what you thought was a true rate, it was some 20 or 30 points higher?

A. That's correct.

Q. Than the other occasion?

A. That's correct.

Q. Therefore, you say that this mental condition had raised this patient's metabolic rate 20 or 30 points?

A. Yes, because the two determinations were taken at the same—between short times.

Q. The other conditions?

A. Being the same.

Q. Being the same, yes, I understand.

A. Yes.

Q. You normally take it after how long a period of rest?

A. After a full night's sleep, and then an extra one-half hour's rest after the patient has reached the office.

Q. And the patient has not eaten since the night before, is that correct?

A. That's correct.

Q. I take it, Doctor, that thyroid medication accelerates the normal processes that are going on in the human body all the time, is that right?

A. That is correct.

Q. Do you subscribe to this theory that it contains a hormone?

A. Yes.

Q. Desiccated thyroid, then, is some protein and some, perhaps, carbohydrate, and plus a hormone, is that right?

A. That's correct.

Q. That is a correct statement?

A. I might add that the hormone may be the protein.

Q. May be contained in the protein?

A. That's it.

Q. You mean to say it may be the protein?

A. It may be one of the proteins present.

Q. I see, and that is the same hormone in desiccated thyroid that is produced by the human being's normal thyroid gland, is that right?

A. As nearly as we can determine it.

Q. As far as you know?

A. Yes.

Q. That is your opinion that it is?

A. Yes.

Q. That hormone activates the tissues or cells of the body, does it?

A. It does.

Q. But the method by which it does it you don't know, is that right?

A. That's right.

Q. And, as far as you are aware, nobody knows?

A. That's right.

Q. Did I understand you, Doctor, that you had observed patients who were hyperthyroid, and still obese?

A. That's correct.

Q. How did you make your diagnosis of hyperthyroidism in that patient?

A. By basal metabolic rate.

Q. Then what you mean to say is that they had a rate above the normal and still obese, is that right?

A. That's correct.

Q. Did you see any objective symptoms of hyperthyroidism?

A. I did.

Q. What, in those patients?

A. Those patients had an increase in the size of the thyroid gland, and they had increased pulse rate over what was to be expected for their age, they had an increased systolic blood pressure.

Q. They had a toxic goiter condition, didn't they?

A. That's correct.

Q. Which was at least progressed to the point that it was observable in the neck?

A. That's correct.

Q. And did they have an exophthalmos?

A. Some of them did.

Q. Don't you believe that a man with an exophthalmic goiter, or toxic goiter, that goiter, that thyroid, is producing something besides the normal output of the thyroid gland?

A. You mean more than the normal?

Q. No, I mean something besides the normal output?

A. That is a question which is difficult to say; I couldn't give an opinion upon that.

Q. You don't have an opinion on that?

A. There are different opinions about that.

Q. I see. There are two schools of thought on that?

A. That's correct.

Q. And you don't—

A. Form an opinion upon it.

Q. —form an opinion either way? Aren't you aware that some doctors treat toxic goiter by thyroid medication?

A. I have never known of a physician whose skill I would consider good at the present time, in the present state of our knowledge, to treat exophthalmic goiter with thyroid.

Q. Or toxic goiter without exophthalmos?

A. Or without exophthalmos.

Q. Do you mean to say that you are aware that that was rather a prevalent practice some years ago?

A. When the properties of the gland and its constituents were first discovered there were many mistakes made, and that's one of them.

Q. That was one of the mistakes that physicians made, eh?

A. That's correct.

Q. Now, you say that you had occasion to observe one patient who had symptoms of excessive doses of thy-

roid, and you observed in that patient an enlargement of the heart, is that right?

A. That's correct.

Q. Did you ever see that patient before —

A. No, I had not.

Q. —the thyroid medication?

A. No.

Q. So far as you know, that patient might have had an enlarged heart before taking the thyroid medication, isn't that right?

A. Yes, except that we could find no other cause for it.

Q. Except you could find no other cause?

A. That's correct.

Q. Doctor, you have observed that there are a number of drugs to which some people may be over-sensitive, or have an idiosyncrasy for it, is that true?

A. That's correct.

Q. Examples?

A. The people may have an idiosyncrasy for most any drug, but some people, will take, for instance, morphine, some people have an idiosyncrasy to morphine.

Q. Well, some people have one for quinine?

A. That's correct.

Q. Some people have it for aspirin?

A. Correct.

Q. We don't need to go into a drug that can be sold only on physician's prescription to find idiosyncrasies, do we? I mean, in the class of morphine?

A. That's correct.

Q. That's correct: Doctor, you observed in the Marmola formula a substance called bladderwrack?

A. I did.

Q. Did you ever prescribe that?

A. I did not.



Q. Are you familiar with what it is or has been prescribed for?

A. I am not.

Q. Are you familiar with its therapeutic effect when taken in the human body?

A. Only that I know that it is not contained in the United States Pharmacopeia, and, therefore, is not considered to have any worthwhile therapeutic effect.

Q. Is it in the British Pharmacopeia?

A. I don't know.

Q. Do you know what the British Pharmacopeia says about its effect?

A. I do not.

Q. I take it, Doctor, that you prescribe diet for obesity with some care as to what the patient is going to eat, don't you?

A. That's correct.

Q. Do you require them to weigh their food?

A. Usually not.

Q. Usually not. I take it that you have observed some people that it is very difficult to reduce with diet, is that true?

A. That's correct.

Q. You normally attempt to get their diet down to a point of bare maintenance, don't you, if you are looking for reduction?

A. Yes.

Q. Do you think people can do that for themselves without doctor's advice?

A. They can.

Q. Do you think they can do that?

A. They can.

Q. But your observation is they don't, is that it?

A. That's correct.

Q. Do you regard it as perfectly safe for the lay individual to attempt to reduce obesity by dieting?

A. No, I do not.

Q. Is it your opinion, that if a man is obese, or woman, and desires to correct that condition by dieting that they ought to see a doctor?

A. Yes.

Q. And he might do himself considerable harm if he did not, is that right?

A. Yes.

Q. The same thing applies to exercise designed to reduce obesity, is that true?

A. Yes.

Q. That ought to be done under a doctor's supervision and control hadn't it?

A. Yes, except that he could probably do himself very little harm with exercise; he would probably stop before he did much harm.

Q. It depends very largely upon his condition before he started to exercise, and how strenuous the exercise was, isn't that true?

A. That's correct.

Q. And any exercise that is designed to correct obesity and is out of the patient's normal habits ought to be done under a doctor's advice, hadn't it?

A. It would be better if it were, yes.

Q. There are a good many people have suffered some very bad effects from too strenuous exercise, haven't they?

A. Once in a while it occurs.

Q. Doctor, do you know the cause of this toxic goiter that you observe in the human?

A. No.

Q. So far you are aware, nobody knows the cause of it, isn't that right?

A. That's right.

Q. Isn't it true that the generally accepted opinion is that in toxic goiter it is the body that is making the thyroid sick, rather than the thyroid that is making the body sick?

A. No, I wouldn't say so at all.

Q. You don't think that is true?

A. No.

Q. Is that view held by some people?

A. The only view that I could think of that might relate to that would be that there is an interrelation between the thyroid and other glands of internal secretion, and the other glands might have an effect upon the thyroid which would make it function incorrectly.

Q. But it is your view that it is not being caused by some other bodily condition, it is not the body, some other condition of the body that is making the thyroid sick, is that right?

A. I can't be sure. We can trace the cause back to the thyroid, but we cannot trace it any further back, it may go back further.

Q. It may go back further, but you don't know where?

A. That's right.

Q. All right. I take it, doctor, in your weight reduction program for the patients, if they follow your diet in some instances at least they will commence to oxidize some of the materials that are stored in the body, is that right?

A. That's correct.

Q. If you are going to be successful in your treatment of that patient, it means that that patient is going to oxidize some of the stored materials?

A. That's correct.

Q. And those stores are, in general, fats, proteins and carbohydrates?

A. The stores are usually fats, and, to a certain extent, carbohydrates; not proteins.

Q. Doesn't the body store any protein?

A. As far as we know, it does not store any excessive protein.

Q. Well, then, your problem is to get the body to burn these stored fats and carbohydrates, is that right?

A. That's correct.

Q. The body ordinarily burns fat during the same process as burning carbohydrates.

A. That's correct.

Q. In other words, it is necessary in order to burn fat to, at the same time, burn carbohydrate?

A. That's correct.

Q. That is, in any quantity. And when you take thyroid medication, the body burns, oxidizes, some of this stored fat and carbohydrates, is that true?

A. That's correct.

Q. And it does that in the same process that it normally does it—I mean to say, that the thyroid simply stimulates the cells to greater activity, isn't that right?

A. That's right.

Q. Well, Doctor, when the thyroid is taken normally, I take it that the protein is probably digested the same as any other protein that is taken into the body?

A. That's correct.

Q. And the hormone, or the thyroxin, the active principal, or whatever it may be, is taken in by the blood stream, is that right?

A. As far as we know.

Q. As far as you know. Do you know whether or not it is?

A. I know that is the customary—that is the usual method of the body handling such proteins, and it handled that protein in that way too.

Q. That is, that is the present view on the matter?

A. That's correct.

Q. But nobody is able to prove it?

A. It could be proven by using that particular protein in experiment, as has been done with other proteins.

Q. Well, then, where does this hormone go after it gets in the blood stream?

A. It is diffused through the blood stream and taken, as far as we know, to the cells of all the tissues in the body.

Q. And then what happens,—it stimulates those cells?

A. As far as we know, it stimulates those cells.

Q. This is all a matter of theory, is it?

A. As much theory as any of our medical theories.

Examiner Norwood: What is the difference with respect to the reaction on the body between metabolism of exercise and the metabolism of thyroid stimulation?

The Witness: The metabolism of exercise calls upon only certain organs, and the organ systems to do extra work. The metabolism of the thyroid calls upon all of them indiscriminately, regardless of whether they are—ordinarily do a certain amount of work or not, and, in addition, exercise will be governed by certain factors which tend to stop it; whereas, thyroid extract would not be governed by such factors. In other words, acting upon muscle, is stopped when the muscle becomes fatigued.

Examiner Norwood: Yes.

The Witness: The thyroid extract after activity is



not necessarily stopped at that time, because of its action upon other organs which tend to mask that symptom of fatigue; there is a feeling of well being that goes with the use of it.

Examiner Norwood: Then the one, you consider more injurious than the other?

The Witness: I do.

Examiner Norwood: In other words, the thyroid stimulation you consider more injurious than the exercise?

The Witness: Yes, for the reason that I spoke of.

Examiner Norwood: Yes.

By Mr. Gust:

Q. Well, Doctor, you just made a statement that thyroid medication stimulates all the cells in the body, while exercise did not; is that right?

A. That's correct.

Q. How do you know the thyroid stimulates all the cells in the body?

A. I don't know it from personal observation, because it is impossible to tell.

Q. Certainly.

A. But I know that that fits in with all the other observations which I personally have made, and which other people have made, and the experimental work which has been done upon the question.

Q. Fits in with it, you say?

A. That concept fits in with all that experimental work, and so forth.

Q. Nobody has ever attempted to say that any such statement as that could be proven, have they?

A. It might be proved by a large amount of work which is not worthwhile considering the fact that it is so close to proven otherwise.

Q. I take it that the number of cells that are stimulated by exercise with increased metabolism, depends upon the kind of exercise you take?

A. That's correct.

Q. But one of them that is greatly stimulated is the heart?

A. That's correct, except that the heart is stimulated secondarily and not primarily as in thyroid exercise.

Q. The heart rate is increased with any violent exercise?

A. Yes.

Examiner Norwood: Why do you say that is secondary?

The Witness: Because in exercise the muscles are first stimulated, and then their lack of oxygen, or perhaps reflexes from them, stimulates the heart, but it can be shown that the heart is not directly stimulated. On the other hand, it has been shown experimentally that the heart muscle is directly stimulated by the thyroid before the impulses from the muscles reach it.

Mr. Gust: I think that is all.

### Re-direct Examination

By Mr. Michael:

Q. Doctor, is it not a fact that a person can reduce their diet without any advice or examination on the part of a physician?

A. They can.

Q. Isn't it possible for them to reduce their diet to a certain extent without any injurious effect?

A. It is.

Q. Do you consider, Doctor, that such handling of the diet, upon the part of an obese person, is as dangerous as the use of thyroid without the advice of a physician?

A. No, I do not.

Mr. Gust: I object to that, if the Court please, as being improper.

Examiner Norwood: The objection is overruled.

Mr. Michael: That is all.

*Re-cross Examination*

By Mr. Gust:

Q. Doctor, you just told counsel that it was possible for a man to reduce his diet without injury. It is also possible to injure him, isn't it?

A. It is.

Examiner Norwood: If he reduces over a pound a day, does it hurt him?

The Witness: I would say that it would be very likely to hurt him, if he reduces at that rate.

By Mr. Gust:

Q. It is not altogether the amount that he reduces either from improper diet, as a safe guide to harm, is it?

A. No, that would not be the guide.

Q. No, he might very greatly harm himself and not reduce at all, is that true—

A. No, that is not possible.

Q. —with a diet.

A. It is possible if he left out certain very essential factors, but he wouldn't be likely to leave them out.

Q. How about some of these so-called Hollywood diets where they give you nothing but pineapples, or some other one thing, they are apt to do considerable harm to an obese person, aren't they?

A. Only by the fact that they leave out certain things which after many months would be deleterious, and if a person found that he was not losing weight after that

period of time he would have stopped the diet long before that.

Q. Now, I take it that if a patient has any bodily ill, that self-imposed diet is liable to be dangerous?

A. It is more likely to be dangerous.

Q. If a man wants to reduce safely by diet he has to go to a doctor, hasn't he?

A. Yes.

Mr. Gust: That is all.

Mr. Michael: That is all.

(Witness excused.)

Examiner Norwood: I think we might as well take a little recess.

(A short recess was taken.)

ALBERT J. SMITH, was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Michael: \*

Q. Give your full name to the Reporter, please Mr. Smith.

A. Albert J. Smith.

Q. Where do you live?

A. 526 Oneida Place.

Q. What is your occupation?

A. Buyer of the Washington Wholesale Drug Exchange.

Q. Where is that located?

A. 459 C, northwest.

Q. Is that a jobber's concern?

A. Yes, sir.

Q. Jobber of drugs?

A. Drugs, sundries and most anything nowadays.

Q. To whom do you sell?

A. Retail drug trade.

Q. About how many customers do you have?

A. Approximately 245.

Q. Where are those customers located?

A. All, except about 25, in the city proper; the rest are in the outskirts like nearby Virginia, Cherrydale, Alexandria, Hyattsville, and as far as Gaithersburg.

Q. Some in Maryland?

A. Yes, Rockville.

Q. Do you handle any thyroid?

A. Thyroid?

Q. Yes.

A. Yes, sir.

Q. Whose do you handle?

A. Oh, I have numerous kinds.

Q. Just name them, please.

A. Armour; Hynson Westcott & Dunning; Sharp & Dohme.

Q. Is that sold to the druggist?

A. Yes.

Q. How is it sold by them, by prescription, or to the laity, or both ways?

A. Why, I imagine it is sold both ways; mostly by prescriptions.

Q. Do you handle other obesity medicines?

A. Well, what the retail druggist demands, yes, sir; we put them in as soon as we have sufficient calls for them.

Q. Do you sell Vannay?

A. Yes.

Q. Where is Vannay manufactured?

A. I will have to look at my memorandum, I have so



many of them. (Referring to memorandum book) That's manufactured in New York City, Byo Chemical Company.

Q. That is sold as a treatment for obesity, is it?

A. Well, that's what it says, but, of course, the only thing we do is fill orders on that; the retail druggist gives his order and we just fill orders.

Q. That's what it says.

A. I think the label says that.

Mr. Gust: I move to strike that out; the label is the best evidence of what these claims are.

Examiner Norwood: Do you know what it is sold for to you—when you buy it, as stated, the purposes for which it is used—

The Witness: That's only presumption. We don't go into those details, see? In fact, very many of the packages we never even see outside of the carton, no sir.

Examiner Norwood: The motion is denied.

By Mr. Michael:

Q. What does the label say?

Mr. Gust: I object to that as being an improper way of trying to prove what the label says. The label is the best evidence of what it says.

Examiner Norwood: I think if he knows that and states the purposes for which this medicine is used he can tell it, and you can get that label and refute it if that is not what it says.

By Mr. Michael:

Q. Have you brought Vannay with you?

A. Yes, sir, (producing).

Examiner Norwood: Is this the medicine you refer to, and does this contain the label?

The Witness: They have the label on the package.

Examiner Norwood: It contains the label inside?

The Witness: Yes.

Examiner Norwood: I think I better reverse my ruling on that then, and allow the motion to strike with regard to that label, since it is within their power to show the exact label.

By Mr. Michael:

Q. Have you become familiar enough with their package containing Vannay to know what it sold for, what Vannay has sold for?

Mr. Gust: I object to that, if the Court please. This witness obviously is a wholesale druggist; he doesn't know what retail drugs sell for.

Examiner Norwood: He is asking him if he knows.

Mr. Michael: I am asking him whether he knows what the company sells it for.

Mr. Gust: If he did know it it would necessarily be hearsay; it is so obviously something that somebody has told him.

Examiner Norwood: Not necessarily, he buys these goods for certain purposes and sells them for certain purposes.

Mr. Gust: If the Court please, he says that he buys them because there is a demand for them, and he fills orders.

Examiner Norwood: I am not willing to permit him to testify as to what is on any particular label, especially the label is right here that he introduced, but if he knows what the purposes are that he buys them for and sells them, I think he can tell it.

The objection is overruled.

(The last question was read by the Reporter.)

Mr. Michael: I will amend the question.

By Mr. Michael:

Q. Have you become familiar enough with their pack-

age containing Vannay to know what Vannay sold for by the company that manufacturers it?

A. Well, I have never paid an awful lot of attention to it, but it has been in my mind that it is used for reducing, because lots of these things we see and just simply see them and put them out, that's all.

Q. Are there other medicines that you handle used in obesity?

A. Yes, I imagine we have quite a few, sir.

Q. Will you name them?

A. I couldn't attempt to name them all.

Q. How about Bon Kora?

A. Yes, we handle Bon Kora.

Q. Where is that manufactured and sold?

A. Battle Creek.

Q. Is that offered for sale as an obesity remedy or treatment?

A. I have always understood it was, yes, sir.

Q. How about Welch's grape juice?

A. Well, to me it is only a drink.

Q. You handle that, do you?

A. Yes, sir.

Q. You sell it to drug stores?

A. Yes, sir, the way it sells in quantities, why, everybody must be using it now.

Q. Is that not sold for reducing purposes?

A. I couldn't say, no, sir.

Q. Have you seen any of their advertisements or heard their advertising over the radio?

A. No, sir.

Q. You say that your sales have been increased lately?

A. On what?

Q. On Welch's grape juice?

A. Yes, sir.

Q. Do you know what caused that increase?

A. Why, I imagine it is a pleasant drink.

Q. About what time did that increase take place?

A. Why, it has been gradually increasing all the time.

Q. How about Dietine; do you handle that?

A. Yes, sir.

Q. What is that sold for?

A. I don't know.

Q. Reducing soap?

A. We have had some labeled "reducing soap," but I haven't seen any for some time, sir.

Q. Do you know where that is manufactured?

A. No, sir, I do not.

Q. Do you know where Dietine is manufactured?

A. Yes, I have one of their invoices right in my pocket; (referring to paper) Minneapolis, Minnesota.

Q. Did I ask you about Bon Kora, where that was manufactured?

A. Battle Creek, yes.

Q. Have you any others that you carry in stock?

A. Well, probably we have, yes, sir, but you know it is a vast business and so many items in our business it is hard to keep track of them.

Q. Do you know whether Marmola is sold for reducing purposes?

A. I don't know just how to answer it; I imagine it is, because it has always been known for that.

Mr. Michael: I think that is all.

Mr. Gust: That is all; no questions.

Examiner Norwood: Thank you.

(Witness excused.)

(There was a discussion off the record.)

Examiner Norwood: On motion of the counsel for the Complainant, hearing is now adjourned at 3:50 p. m. to reconvene in New York, New York, on February 6 at 10:00 a. m., in Room 500 at 45 Broadway.

(Whereupon, at 3:50 o'clock p. m., February 4, 1936, the hearing in the above-entitled matter was adjourned.)

## PROCEEDINGS

(Continued February 6, 1936)

Examiner Norwood: Pursuant to adjournment at Washington, D. C., on February 4, 1936, the hearing is convened in Room 500, at 45 Broadway, at 10 o'clock a. m., February 6, 1936.

It is immediately adjourned to Room 823 in the same building, after due notice.

(Whereupon a recess was taken to reconvene in Room 823.)

Examiner Norwood: The hearing will now proceed. It is noted that Mr. E. J. Hornibrook and Mr. Harry D. Michael, Attorneys for the Federal Trade Commission, are present representing the Federal Trade Commission, and Mr. Rockwell T. Gust of 2288 National Bank Building, Detroit, Mich., is present for the Respondent herein.

(There was a short discussion off the record.)

Examiner Norwood: Proceed.

Mr. Michael: I will call Dr. Frederic Damrau.



DR. FREDERIC DAMRAU was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Michael:

Q. Please state your name.

A. Doctor Frederic Damrau.

Q. Your address?

A. 247 Park Avenue, Manhattan, New York City.

Q. Doctor, will you please state your name in full, loud enough so that Counsel may hear it.

A. Frederic, without the "k," Damrau, spelled D-a-m-r-a-u.

Q. What is your business or profession, Dr. Damrau?

A. I am a physician specializing in medical counsel to companies advertising medicinal and food products.

Q. Where is your office located?

A. 247 Park Avenue, New York, N. Y.

Q. How long have you been in that business?

A. Fifteen years. I have been a physician since 1913.

Q. Prior to engaging as a consultant for medical and drug concerns, did you practice medicine?

A. I practiced medicine for several years after graduating, in 1913. I was also on the teaching staff of the Long Island College Hospital in Brooklyn.

From 1917 until 1921 I was an officer in the Medical Corps of the Army.

Q. In connection with your services as counsel, as you have detailed, do you pass upon and write advertising matter for the concerns to whom you give counsel?

A. I do.

Q. Have you ever acted as counsel in that regard for the Welch Grape Juice Company of Westfield, New York?

A. Yes.

Q. How long have you acted as medical counsel for that company?

A. Since approximately December, 1934.

Q. Is there any particular phase of their business or advertising matter that you counsel and pass upon?

A. I counsel and pass upon all advertising wherein health claims are made.

Q. Is one of those health claims the use of Welch's Grape Juice used in connection with reduction?

A. Yes.

Mr. Gust: I object to that. The advertisements are the best evidence of their therapeutic claims for Welch's Grape Juice.

I move that the answer be stricken.

Examiner Norwood: He has not said anything about the advertisements. He is asking, as a matter of fact, as to whether or not the grape juice is recommended for this purpose.

By Examiner Norwood:

Q. Is that right?

A. Yes, sir—excuse me. If I may have that question read, please.

(Question read.)

The Witness: Yes.

Examiner Norwood: Objection overruled.

The Witness: Yes.

By Mr. Michael:

Q. You may state whether or not you, as consultant for the Welch Grape Juice Company, passed upon and scrutinized or wrote and if you now pass upon and scrutinize or

write all the advertising matter that is gotten out by the company and published in the newspapers, magazines, or over the radio in connection with such claims, in its use in reducing?

A. Copies of this advertising is sent to me for review and censorship by the advertising agency, Kastor Agency in Chicago, who handle the Welch account. I do not know whether or not it is a fact that this comprises all the advertising. It does comprise all of the advertising that I have, personally, seen in the newspapers.

Q. Does the Welch Grape Juice Company advertise over the radio the use of grape juice in reducing?

Mr. Gust: I object to that as the radio continuities are available to the Commission and in the Commission's possession and are the best evidence of the claims.

Mr. Michael: I just asked if they do that.

Mr. Gust: If the Court please, in making my objection, the point is that whether they do that or not is best disclosed by their radio continuities, all of which are in the hands of the Commission.

Examiner Norwood: The radio advertising is verbal and the mere circumstance that it happens to be written in one place or printed in another makes little difference, it seems to me.

The witness has testified as to the claims. The witness is testifying as to the means or manner in which that company uses those claims and in which the company conveys those claims to the public.

Objection overruled.

By Mr. Michael:

Q. Answer the question.

A. On the basis of my personal knowledge, I appear on the N.B.C. network on behalf of the Welch Grape Juice Company and broadcast, myself. I make these appearances

about once every four weeks. In these appearances I do recommend the use of Welch's Grape Juice and sensible eating for the purposes of reduction.

Q. In making those appearances, do you do so as representative of the Welch Grape Juice Company and speak in their behalf?

A. Well—

Q. Are you employed by the Welch Grape Juice Company?

A. I am retained by them and advise them in regard to their advertising.

Q. Do they employ you to do the broadcasting?

A. Well, I do that. You mean, do I receive compensation? ✓

Q. Yes.

By Examiner Norwood:

Q. Do you do that as a part of your regular work?

A. I do.

Q. For that company?

A. Yes.

Q. What does your compensation cover?

A. The compensation I receive is part of my monthly retainer. I do not receive a special fee for the appearances, nor am I limited in what I say. I can make any statement that I desire.

By Mr. Michael:

Q. You do that for them?

A. Yes.

Q. Under your contract for your services with them?

A. Yes.

Q. Dr. Damrau, in broadcasting in regard to Welch's Grape Juice for use in reduction, what claims have you made?

Mr. Gust: I have the same objection to that. I think the written continuities are available and are the best evidence.

Mr. Michael: Here is the map that said it. That is the best evidence.

Examiner Norwood: I think he can tell that. The objection is overruled.

By Mr. Michael:

Q. Answer the question.

A. I make the claim, principally, that it offers a healthful method of reduction, which I have tested personally in a series of 31 cases with controls which I tested. I learned that the use of Welch's Grape Juice, according to a method we advised, affects an average reduction of 7 pounds per month without a stipulated diet, without exercise; that is, without stipulated exercise; and, without the use of any drugs.

I stated, also, based on my experience, that during such a method of reduction those who use it do not suffer from spells of dizziness, nervousness, hunger pain, which is characteristic of many methods of reduction by dietary curtailment.

I also advise people to eat sensibly and to avoid fattening foods, many of which are named specifically in some of the broadcasts, and in correspondence with people who write to me.

Mr. Gust: What is that answer?

(Answer read.)

By Mr. Michael:

Q. In those broadcasts, or any of them, have you stated your theory as to the way in which reduction is achieved by the use of your instructions in connection with the use of Welch's Grape Juice?



A. Yes. I have stated, on the basis of my experience, that Welch's Grape Juice taken before each meal checks the craving for fattening foods so that one voluntarily curtails the habit of overeating in these fattening foods.

Q. How long have you broadcasted for Welch's Grape Juice Company?

A. Since March of 1935.

Q. To what extent is that broadcast?

A. That broadcast is over the "Blue Network" of the National Broadcasting Company, which I understand is practically a Coast-to-Coast broadcast. I cannot state that as a fact.

The National Broadcasting Company would have to do that; they would be able to do so. I know it is stated on the continuities that it is over the "Blue Network."

Q. It is not merely a local broadcast?

A. No, it is a hook-up.

Q. Do I understand that your statements that you stated you made over the radio in regard to the way in which the Welch's Grape Juice and its use would effect reduction were based upon your own personal investigation and experience?

A. It was based on my own investigation and experience. The investigation was conducted at the expense of the Welch Grape Juice Company.

Q. I wish you would state, generally, Doctor, how widely Welch's Grape Juice is advertised by other means than the radio?

A. My answer would have to be exceedingly general and represent an opinion inasmuch as—

By Examiner Norwood:

Q. Just tell what you know about it.

A. All that I know is that I have seen these advertise-

ments which I censor, in the newspapers of many of the cities where I travel.

By Mr. Michael:

Q. Do you also see them in different magazines of national circulation?

A. I cannot recall seeing them in the magazines; but, then, I do not read magazines very much.

Q. You do not have any supervision over the placing of these advertisements?

A. None whatsoever. That is done by the Kastor Agency in Chicago.

Q. Have your travels, where you have seen Welch's Grape Juice advertisements in the newspapers, been extensive?

A. I have seen them in Chicago, Boston, Philadelphia, St. Louis, Washington, New York, of course.

Q. Were these all advertisements that you had passed upon in regard to the use of grape juice in reduction?

A. Yes, sir. They were.

Mr. Michael: That is all.

Examiner Norwood: You may cross-examine.

### Cross Examination

By Mr. Gust:

Q. Doctor, have you ever had occasion to analyze the contents of Welch's Grape Juice?

A. I have been furnished by the company with a statement of the analysis which includes their work and also the work of the United States Department of Agriculture. I have here the analysis if it is of interest to the court.

Q. Is that the analysis which was furnished to you by the Welch's Grape Juice Company?

A. Yes.

Q. You did not analyze it yourself?

A. I did not. I am not a chemist. I would not be capable of analyzing it.

Q. May I see the formula?

A. Surely.

Q. Have you any objection to my taking just this formula from this book? Have you plenty of them?

A. Yes, that is quite all right. You can keep the whole book—

Mr. Michael: You can put the whole book in if you desire.

The Witness: —if you wish.

By Mr. Gust:

Q. At the present moment I just want the formula.

A. Very well.

Mr. Gust: I ask that this be marked as Respondent's Exhibit 13, for identification.

Examiner Norwood: That may be done.

(The document referred to was marked "Respondent's 13," for identification, being page 4 of a book entitled "For the Medical Profession—Welch's Grape Juice, an original study of its use for obesity and other valuable health properties, by Frederic Damrau, M. D., New York.")

By Mr. Gust:

Q. Doctor, I show you the document which the Reporter has marked as Respondent's Exhibit 13, for identification, and I will ask you if that is the formula for Welch's Grape Juice, as far as you know?

A. As far as I have been informed by information given to me from the Welch Grape Juice Company and also publications of the United States Department of Agri-

culture, that is the correct formula of Welch's Grape Juice. I have not analyzed it personally.

Mr. Gust: I offer it in evidence.

Mr. Michael: I have no objection.

Examiner Norwood: It is received in evidence as Respondent's Exhibit 13.

(The document referred to, heretofore marked "Respondent's Exhibit 13," was received in evidence.)

By Mr. Gust:

Q. I take it, Doctor, that Welch's Grape Juice is made, in the main, from Concord grapes?

A. Yes, sir.

Q. I take it that it has substantially the same formula as any other grape juice made from Concord grapes?

A. I am not familiar with other brands of grape juice. I know they are pressed in different fashions. So, all I can give you is my own opinion, and that is that the formulæ are by no means identical. There are wide variations in the properties of grapes and of Concord grapes.

Q. Doctor, is there anything added to Welch's Grape Juice other than what is present in the grapes?

A. It is the pure product pressed out of the grapes. The only thing that is added is a small percentage of cane sugar to bring the sugar percentage up to a uniform standard which is so that the product will taste the same. That is because the natural sugar content varies.

Q. So you standardize on a particular consumer sugar taste and bring your product up to that standard for the purposes stated; that is, that the juice will taste the same to the consumer year after year; is that it?

A. I presume that is the purpose. I have nothing to do with that.

Q. Doctor, as I understood you to say, it is your theory

if Welch's Grape Juice is taken before meals that it inhibits the appetite to some extent; is that right?

A. Yes.

Q. It inhibits the appetite for fat-forming foods; is that right?

A. Yes.

Q. Do you claim it inhibits the appetite for fat-forming foods any more than any other kind of food?

A. It has seemed to have such an action.

Q. Do you know of any scientific reason why it should inhibit the appetite for fat-forming foods and not, at the same time, other foods?

A. Yes.

Q. So you know such a scientific reason?

A. Yes. It is based on the well-known satiety value of certain foods.

Q. It is not your claim that there is anything in Welch's Grape Juice which is a medicant, is it?

A. No, Welch's Grape Juice is a food. There is in it grape sugar, which is chemically identical with blood sugar and many people, during the process of reduction, suffer temporarily from the loss of an abnormal amount of blood sugar making them feel the pangs of hunger, weakness, and nervousness. They immediately rush for a snack or something to eat, and eat double the amount of food, fatty food, that they would ordinarily.

Q. If they took a little grape sugar in other forms besides Welch's Grape Juice it would have the same effect?

A. It would with regard to the blood sugar. It would not have the same satiety effect. Do you understand what "satiety" means?

By Examiner Norwood:

Q. Yes.



A. By that I mean a satisfying of the craving for food.

By Mr. Gust:

Q. Do you know that Welch's Grape Juice satisfies the craving for food better than grape sugar in any other form; is that your idea?

A. That is my belief.

Q. That is your belief?

A. That is my belief.

Q. It gets right down to this, Doctor, that people reduce, if they do reduce through this action, by reason of the reducing in food intake, a reduction in the amount of food intake; is that true?

A. It amounts to a reduced food intake.

Q. If they reduce their diet enough they will have an accompanying reduction in flesh; is that right?

A. Oh, yes.

Q. Do you know what the solids are that it is said there are seventeen percent of in this formula?

A. The 17 percent of solids include principally the various items "enumerated below," such as sugar. The solids are, of course, dissolved.

Q. Is it your claim, Doctor, that a man can reduce by drinking Welch's Grape Juice if he does not at the same time reduce his diet?

A. That is not an accurate statement of my claims.

Q. All right. That is not your claim, is it?

A. That is a slightly distorted statement of what I have found.

Q. I take it, Doctor, that you will not contend that the drinking of Welch's Grape Juice will reduce an obese person who does not at the same time reduce his diet; will you?

A. I have found that the drinking of Welch's Grape Juice before meals with no dietary restriction placed upon him will reduce his weight, the reason being that obesity in almost every instance is caused by the habit of overeating.

Q. The reduction comes about because the patient reduces his food intake; is that right?

A. Because his craving for overeating is so satisfied that he is willing to reduce his food intake as long as he can do so without suffering from the symptoms of starvation.

Q. He does do so?

A. He does it; he does do so, surely.

Q. If he gets any results he must reduce his food intake, must he not?

A. Whether he does it happily, voluntarily, or not.

Q. Or disagreeably?

A. Yes.

Q. But the important thing is that he does reduce it in order to get a reduction in his obesity; is that true?

A. Yes, sir. In other words, if you give him weighed portions of food, with exact calorimetric content.

Q. Yes.

A. The situation can be put this way—I have the exact figures here if I may consult them.

Q. Let me get at it this way, Doctor; let me ask you the questions.

A. Surely.

Q. If you give an obese person a weighed, measured, analyzed diet and with a control exercised, and you find that that person, on that diet, and with those restrictions did not either gain or lose weight, we will assume that we add to these conditions nothing except Welch's Grape

Juice, and the person continues to eat the same and to exercise the same, do you claim that the addition of the Welch's Grape Juice to the patient's diet will affect in any way his obesity?

A. I can only answer that on the basis of my investigation.

Q. "Yes," or "no"; do you claim that or do you not?

A. That question is so involved that I would have to have it repeated.

Examiner Norwood: Read it to him.

(Question read.)

The Witness: The conditions that we tried and could not be—

By Mr. Gust:

Q. I just want a "yes" or "no" on that.

By Examiner Norwood:

Q. What do you think about that, Doctor, on the given case.

A. That is a hypothetical situation, that I realize. When I tried to do it the patients when they were given Welch's Grape Juice refused to take the same amount of food, so you have no more food—

Mr. Gust: I object and move to strike the answer before the witness goes any further.

Mr. Michael: I submit, Mr. Examiner, that the witness can qualify his answer if he cannot answer it "yes" or "no." He stated it had to be qualified. That is the effect of his statement.

Examiner Norwood: If he cannot answer it, he can say so. He can say "yes" or "no" or that he cannot answer.

Mr. Michael: And he can qualify it.

Examiner Norwood: I do not see why he cannot make a "yes" or "no" answer to that.

Mr. Michael: He is the one to give the opinion; he is a scientific witness, and if he says that he cannot make a "yes" or "no" answer I think he should be allowed to make the type of answer he says he can make.

Mr. Gust: The motion to strike is still pending.

Examiner Norwood: That is allowed.

Read the original question and I will ask you to tell me whether you can or cannot answer that "yes" or "no."

(Question read as follows:

"Q. If you give an obese person a weighed, measured, analyzed diet and with a control exercised, and you find that that person, on that diet, and with those restrictions did not either gain or lose weight, we will assume that we add to these conditions nothing except Welch's Grape Juice, and the person continues to eat the same and to exercise the same, do you claim that the addition of the Welch's Grape Juice to the patient's diet will affect in any way his obesity?")

By Examiner Norwood:

Q. You are now assuming that the conditions to be as he has stated them.

Do you understand the question?

A. I understand your question.

Q. Can you state what the effect of the grape juice would be?

A. Assuming the conditions stipulated I do not believe the addition of grape juice would effect weight reduction.

By Mr. Gust:

Q. Would not the sugar in the grape juice add an infinitesimal amount of weight?

A. Yes, there would be an addition of 286 calories to the pint.

Q. You said, Doctor, you were counsel for some other concerns putting out medicines?

A. Yes, sir. For many of them.

Q. For what ones?

Mr. Michael: I do not know that that is cross-examination.

Examiner Norwood: Yes. I think he can bring that out and test the witness in that way.

Mr. Gust: I am simply finding out the ones he is counsel for on account of the fact it was brought out on the direct examination of the witness that he was counsel for a number of them.

Examiner Norwood: Objection overruled.

The Witness: I am counsel for Carleton & Hovey, the manufacturers of Father John's medicines.

I am counsel for the complete line of the Anglo-French Drug Company, and have been for 11 years.

During a period of 15 years I have been advisor to 196 firms with regard to their advertising. I have a complete list in my files which can be furnished.

By Mr. Gust:

Q. Have you given us the larger ones?

A. I have given I think, the most important ones which I am serving at the present time.

Q. The advertising agency that puts out the Welch's Grape Juice advertising, is that H. W. Kastor & Son, of Chicago, Ill.?

A. Yes.

Q. Do you happen to have the label that is put on the bottle of Welch's Grape Juice with you, any of them?

A. No, sir.



Mr. Gust: I think that is all.  
 Examiner Norwood: Re-direct.

### Re-direct Examination

By Mr. Michael:

Q. Doctor, you have referred to a booklet here from which the formula for Welch's Grape Juice was taken and placed in evidence?

A. Yes.

Q. What is that book?

A. "Welch's Grape Juice—An original study of its use for obesity and other valuable health properties."

Q. Who wrote that?

A. I wrote it.

Q. Is that book widely circulated?

A. I believe it is, but I do not know the extent of its circulation.

Q. You do not circulate it?

A. I have nothing to do with the circulation. It was written for the Welch Grape Juice Company.

Q. Do you know in what quantities it has been printed?

A. No.

Q. Doctor, in your clinical experience with patients in giving Welch's Grape Juice in connection with reduction, have you found that your patients did voluntarily restrict their fattening food intake during the process of the administering of the grape juice?

A. Yes.

By Examiner Norwood:

Q. Do you claim that the grape juice helps restrict their diet, and if so why?

A. By satisfying their craving for foods which have

a high caloric value, higher than the calories furnished by the amount of grape juice used before meals.

Q. Does the grape juice have a laxative action to any extent?

A. The grape juice is mildly laxative, but we have not found that it was an objectionable laxative when used in this method of reduction.

Examiner Norwood: Nothing further.

Mr. Gust: Nothing further.

Mr. Michael: I have no further questions for the witness.

Examiner Norwood: You are excused.

(Witness excused.)

Examiner Norwood: We will take a recess 10 minutes.

(There was a short recess taken.)

Examiner Norwood: You may proceed.

Mr. Michael: I will call Mr. S. C. Jones.

S. C. JONES was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Michael:

Q. What is your name?

A. S. C. Jones.

Q. Where do you live?

A. Westfield, N. Y.

Q. What is your business?

A. I am the vice president of the Welch Grape Juice Company.

Q. Is that located in Westfield, N. Y.?

A. Yes, sir. That is the location of the general offices of the company.

Q. What is Welch's Grape Juice?

A. It is a pressed juice of Concord grapes.

Q. Is that a product handled and sold by the Welch Grape Juice Company?

A. Yes. That is one of the products.

Q. How general, in territorial extent, is the sale of Welch's Grape Juice?

A. Welch's Grape Juice is sold throughout the entire United States.

Q. What different types of stores handle and sell Welch's Grape Juice?

A. Practically all grocery stores and some of the drug stores and fountains; that is, the confectionary trade.

By Examiner Norwood:

Q. Do all drug stores have it?

A. Yes, sir; some of them do.

By Mr. Michael:

Q. Is the volume of business in Welch's Grape Juice extensive?

A. It is, compared with other grape juices, but not with other fruit juices.

Q. But it goes into large figures?

A. Well, we think so. That is, for a grape juice.

Q. It is not a small business?

A. Well, we think we are pretty small potatoes compared with some of the big businesses.

Q. You mean, as compared with the Standard Oil Company; you are not as big as the Standard Oil Company?

A. No.

Q. I mean, comparing it with others. I am not comparing it with them, Mr. Jones. It is not just a small, local business is it?

A. It is national in distribution.

Q. And in considerable volume?

A. Yes, sir.

By Examiner Norwood:

Q. How many bottles do you sell per year?

A. Well, we have not published those figures.

Q. Do you consider that a trade secret?

A. Yes, sir; we do.

Q. All right, sir; you need not answer.

Examiner Norwood: Proceed.

By Mr. Michael:

Q. Do you sell it in every State of the United States of America?

A. I would think so. I could not, without referring to our records, say; but I believe so.

Q. Does your company advertise nationally?

A. We advertise in the newspapers, in the principal marketing centers, about fifty-odd centers.

Q. In the United States?

A. Yes.

Q. Do you ever use magazine advertising?

A. We are using, at the present time, but one magazine. Formerly we used many of them.

Q. Is the one you are now using and those you formerly used of national circulation?

A. Yes.

Q. What one are you now using?

A. The "Good Housekeeping Magazine."

By Examiner Norwood:

Q. What is its circulation?

A. Well, it is over 2 million, I am told by the Agency.

Q. Over 2 million?

A. Yes.

By Mr. Michael:

Q. How long have you been advertising it in connection with the treatment for obesity?

Mr. Gust: I object to that. The witness has not stated that he has advertised it that way.

Examiner Norwood: Your grounds are that he has not stated yet that he advertised it that way?

Mr. Gust: As a part of the treatment for obesity.

Examiner Norwood: The objection is sustained until the foundation is laid for the question.

By Mr. Michael:

Q. Mr. Jones, do you advertise Welch's Grape Juice as a treatment for obesity?

Mr. Gust: I object to that. The advertisements are the best indication in that regard.

Examiner Norwood: Objection overruled.

The Witness: Yes. It is advertised in that connection.

By Mr. Michael:

Q. How long has your company been advertising Welch's Grape Juice in that way?

A. Since the middle of 1933. The middle of the year 1933.

Q. Have you so advertised Welch's Grape Juice in the advertising media that you have previously named; the newspapers in these fifty centers; in the magazine, "Good Housekeeping"?

Mr. Gust: I have the same objection to that, if the Court please, that the advertisements are the best evidence of what they contain.

Examiner Norwood: Objection overruled.

The Witness: Yes, sir. We have.

By Mr. Michael:

Q. Did you so advertise it in the other magazines in which you formerly placed your advertisements?



A. No. Our previous advertising of Welch's Grape Juice in magazines was as a drink, or food, health, food drink we called it.

Q. In other words, your advertising in the other magazines was prior to your advertising campaign on this particular question; is that right?

A. I do not believe I follow you there. I do not understand your question.

Q. Well, I will reframe it, Mr. Jones.

A. Thank you.

Q. Just to get the record straight on the matter; Do I understand you to mean, that you advertised at any time in the large number of magazines you referred to, prior to the time you started this advertising campaign of Welch's Grape Juice for use in connection with obesity?

A. We had discontinued all advertising during the depression and did not resume our advertising in a national way until 1933.

Q. That is when you started this particular campaign?

A. Yes, sir. Business had been slowing down and we had not been able to advertise.

Q. Since you started this advertising in regard to the use of Welch's Grape Juice in connection with the treatment for obesity, has business increased?

A. Yes.

Mr. Gust: I object to that as being incompetent, irrelevant, and immaterial, and move to strike the answer.

Examiner Norwood: Objection overruled; motion to strike denied.

Answer the question.

The Witness: Yes.

By Mr. Michael:

Q. Mr. Jones, can you state in what quantities the

booklet published by your company, and written by Dr. Damrau, on the use of Welch's Grape Juice in the treatment of obesity, has been circulated?

A. I could not give you any figures.

Q. Can you state generally?

A. The booklet that Dr. Damrau presented, I am assuming, I just saw the color of the cover, but that booklet was printed in, I think, 10,000 quantity. That is my recollection. I would not be positive of that. Those are sent out to physicians upon request.

Mr. Michael: That is all.

Examiner Norwood: You may cross-examine.

### Cross Examination

By Mr. Gust:

Q. Mr. Jones, you say you are the vice president of the Welch's Grape Juice Company?

A. Yes, sir.

Q. Who is the president?

A. Mr. Paul Welch.

Q. Paul Welch?

A. Paul Welch.

Q. Is Mr. Richard Kastor an officer of that company?

A. Of the Welch Company?

Q. Yes.

A. No.

Q. He is not?

A. No.

Q. Does the Welch Grape Juice Company make any product except Welch's Grape Juice?

A. Yes, sir.

Q. What other products?

A. Tomato juice, jellies, grapelade preserves, Protection.

Q. All foods and drinks?

A. Fruit products, food products.

Q. Are they engaged in the business of making any drugs or internal medicaments?

A. No, sir.

Q. Did you ever hear of the Raladam Company of Detroit?

A. I think not until about 10 days ago.

Q. Did you ever hear of the product, "Marmola," until about 10 days ago?

A. I have heard of it but I did not know what it was.

Q. I see.

A. I had heard the name.

Q. Does the Welch Grape Juice Company regard itself as in competition with proprietary medicine manufacturers?

Mr. Michael: I object to the question on the ground that that is a conclusion for the Commission, and it would be a conclusion that is not proper for the witness to draw.

Examiner Norwood: He is asking if the Welch Grape Juice Company regards itself as in competition with these people?

Mr. Michael: Another thing, Mr. Examiner, it is not proper cross-examination. The witness was not asked for his conclusion on this matter.

Examiner Norwood: The very object of putting this witness up is to prove competition, is it not?

Mr. Michael: To show that his product is on sale in interstate commerce, and how and when and where.

Examiner Norwood: It is to establish the idea of com-

petition. He can ask this man if he knows of any evidence of competition.

Mr. Michael: Nothing of that kind was asked this witness on the direct examination. I do not think it is proper.

Examiner Norwood: The objection is overruled. You can bring out the other particulars on your re-direct examination.

Read the question to the witness.

(Question read.)

The Witness: I have never thought about the matter. We consider ourselves principally in competition with other grape juice manufacturers.

By Examiner Norwood:

Q. Does it consider itself in competition with preparations which are sold for reducing?

A. No, sir.

Mr. Gust: That is all.

Examiner Norwood: Re-direct?

Mr. Michael: Yes, sir.

### Re-direct Examination

By Mr. Michael:

Q. Mr. Jones, for the last two or four years, as I understand you, you have advertised and sold Welch's Grape Juice to people who wanted to reduce, have you?

Mr. Gust: I object to that. I still claim that the advertisements are the best evidence of what they contain, and what they purport to convey to the people on behalf of this corporation.

Examiner Norwood: The objection is overruled. You started that.

Mr. Gust: I would like to state, on the record, that the

grounds of my objection are that this has already been covered in the subject matter of the direct examination, and also, the therapeutic claims and advertising claims are best shown by their advertising, itself, and not this witness' not this witness' opinion of what they contain.

Examiner Norwood: The objection is overruled.

Read to the witness the question.

(Question read.)

The Witness: Yes, sir.

By Mr. Michael:

Q. Is it your opinion that that class of customers are the class of customers that would be interested in any other reducing treatment or product?

Mr. Gust: I object to that question as not being a proper subject of opinion from this witness.

Examiner Norwood: Objection overruled.

(Question read.)

The Witness: Well, may I have the question again, please?

(Question again read.)

The Witness: Well, I do not know, really. We have sold Welch's Grape Juice as a food product. We have never given any consideration to competition excepting as to other fruit juices.

By Mr. Michael:

Q. I am asking you now for your opinion as to whether or not the people to whom you appeal and to whom you sell who use it for reducing purposes are, generally speaking, the same class of people who would be interested in and appealed to by any other reducing product.

Mr. Gust: I object to that question as not being a proper subject for this witness' opinion. The witness has already stated that he did not know what other people may have thought about it.



Examiner Norwood: Objection overruled. I am admitting this to let the witness explain his opinion, you understand.

Mr. Gust: Yes, sir.

The Witness: That would be my personal opinion. We think that Welch's Grape Juice when used in the dietary as outlined by Dr. Damrau was a safe way to reduction.

By Mr. Michael:

Q. In your opinion, preferable to other ways of reduction?

Mr. Gust: I object to it as not the proper subject for this witness' opinion testimony.

Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Michael: Shall we proceed?

Examiner Norwood: Back on the record.

Mr. Michael: I move to strike it out, including the question on cross-examination covering the subject of his opinion as to whether or not the witness believes that Welch's Grape Juice is in competition with Marmola.

Examiner Norwood: Your motion is to strike all of the witness' testimony including that and everything up to this point from there on?

Mr. Gust: If the Court please, I think my question was perfectly competent, and a proper subject of inquiry I object to it being stricken out.

Examiner Norwood: Let that question be read.

(The question was read as follows:

"Q. Does the Welch Grape Juice Company regard itself as in competition with proprietary medicine manufacturers?"

Examiner Norwood: On the ground that that is a con.

clusion which the Commission has to draw from the facts in this case as brought out, and on the grounds that subsequent to the first question there it becomes very evident that the witness has not given any thought to this question on which he has given his opinion, I am going to grant the motion and order it stricken.

By Mr. Michael:

Q. Mr. Jones, do I understand that your company ships Welch's Grape Juice from its plant in Westfield, N. Y., to its customers located in the various States of the United States?

A. Yes.

Q. In what sort of containers is Welch's Grape Juice put out for sale?

A. Glass bottles.

Q. What sizes?

A. What sizes?

Q. Yes.

A. Four ounce, sixteen ounce, and thirty-two ounce.

Q. That is all?

A. Yes. Those are the only sizes.

Mr. Gust: I take it if the Court please, that all inquiry along the same line of my question was stricken out, what it had reference to, is also barred?

Examiner Norwood: I will rule on each question as you ask them, but the same kind of evidence, of course, would be barred.

#### Re-cross Examination

By Mr. Gust:

Q. Mr. Jones, you say you are vice president of the company? —

A. Yes, sir.

Q. Do your duties, among other things have anything to do with the sales?

A. I am responsible for the sales and merchandising policy of the company.

Q. Do you have salesmen that travel?

A. Yes.

Q. Do you know of any grocery stores or drug stores or any other outlets of yours that do not buy Welch's Grape Juice and buy Marmola instead?

A. No.

Q. Do you know of any customers or customer that came into any drug store and debated in his mind as to whether he would buy Welch's Grape Juice or Marmola?

A. No, sir.

Q. Did any of your salesmen ever report to you that the Marmola Company was competing for the business of the Welch Grape Juice Company?

A. No, sir.

Q. Or that the Raladam Company were competing for the business of the Welch Grape Juice Company?

A. No, sir.

Q. You have lost business to other competitors at some time in your lifetime, have you not?

A. Yes.

Q. You have lost it to other makers of fruit juices, have you?

A. Yes.

Q. So far as you know, did you ever learn of one dollar's worth of business being lost to a proprietary medicine manufacturer?

A. Not to my knowledge.

Q. How long have you been vice president of the Welch Grape Juice Company?

A. For 4 years..

Q. Before that, were you connected with them?

A. No, sir.

Q. Mr. Jones, do you regard the advertising of the Marmola Company or the Raladam Company as unfair to the Welch Grape Juice Company?

Mr. Michael: I object to that question.

Examiner Norwood: Objection sustained.

By Mr. Gust:

Q. Mr. Jones, does the Welch Grape Juice Company regard the advertising of the Raladam Company, in the sale of its product "Marmola," as unfair competition with the Welch Grape Juice Company?

Mr. Michael: I object to the question.

Examiner Norwood: Objection sustained.

Mr. Gust: That is all.

Examiner Norwood: Re-direct.

#### Re-direct Examination

By Mr. Michael:

Q. Mr. Jones, at what retail prices do these various containers of Welch's Grape Juice sell?

A. The four ounces sells at from 10 cents to 15 cents per bottle; the 16-ounce, well, it is cut in price, and it is sold from about 18 cents up to about 25 cents per bottle; and the 32-ounce is sold at about twice that price. That is, about 35 cents per bottle to 37 cents. It may be 40 cents sometimes. That is the retail price.

Q. Is that all of them?

A. Yes, those are the three sizes.

Q. As I understand it, neither your company nor your

self, nor your wholesalers, sell Welch's Grape Juice directly to the consuming public?

A. No, sir.

Mr. Michael: That is all.

Mr. Gust: That is all.

By Examiner Norwood:

Q. I want to find out what you know about this trade here.

A. Yes.

Q. In case your sales of grape juice for use in reducing are to be, or should be affected, lessened, or increased by the sale of medicines used for reducing, and so forth, would you be interested in knowing the facts about that, or what would be your reaction?

A. Yes, sir. I should know about it.

Q. Do you know?

A. I know that our business has increased.

Q. Do you know the effect that these drugs or foods have had? Are you in a position to give us any data on that? Do you know, or can you say what effect the sales of reducing drugs would have on such of your grape juice that you sell for reducing purposes? Do you know anything about that?

A. We do not seem to know that they exist.

Examiner Norwood: That is all I care to ask.

### Re-cross Examination.

By Mr. Gust:

Q. You mean to say that you do not seem to know that the Raladam Company exists?

A. Positively.

Q. Is that right?



A. That is right.

Mr. Gust: Nothing further.

### Re-direct Examination

By Mr. Michael:

Q. Mr. Jones, you also do not know how many customers you might have had who have otherwise bought Marmola and other reducing preparations; do you?

A. No.

Mr. Michael: That is all.

Mr. Gust: That is all.

Examiner Norwood: You may be excused.

(Witness excused.)

Mr. Michael: I will call as the next witness for the Commission Mr. Samuel W. Fraser.

SAMUEL W. FRASER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Michael:

Q. What is your name?

A. Samuel W. Fraser.

Q. What is your business, Mr. Fraser?

A. I am employed by Burroughs-Wellcome Company (U. S. A.), Inc., manufacturing chemists.

Q. Is that company a branch or subsidiary of the English organization of the same name?

A. It is an associated house.

Q. What is the corporate name of the English company?

A. Burroughs-Wellcome & Company.

Q. Where is the United States corporation located?

A. The general offices are at 9 East Forty-first Street, New York City.

Q. What is the general nature of the business conducted by your company?

A. Pharmaceutical manufacturers.

Q. Does your company also engage in sales work?

A. Yes, sir.

Q. To what group of people? To whom, or to what class of trade does the Burroughs-Wellcome sell?

A. Principally, to wholesale druggists.

Q. Where are they located, generally?

A. Generally throughout the United States.

Q. Do you ship all of the products that you sell to these wholesale drug companies from your offices here in New York?

A. Well, from our manufacturing premises in New York State.

Q. To the various States where these wholesalers are located?

A. Yes.

Q. What is the method of sales procedure as to that, of your products? Are they sold, then, finally, or eventually, by retail druggists to the purchasing public; is that the system?

A. The promotion in the use of the products is developed through detail work to physicians. They prescribe them very generally for use.

Q. The ultimate sale is made to the consuming public through the retail stores?

A. Through retail drug stores is the last outlet.

Q. In your pharmaceutical preparations, do you prepare and sell, or does your company prepare and sell thyroid preparations?

A. Yes, sir.

Q. What is the name of the thyroid preparations that you prepare, or that are prepared and sold by your company?

A. They have the so-called "Tabloid thyroid gland."

Q. Does that have as an ingredient desiccated thyroid, or is it desiccated thyroid entirely?

A. It contains desiccated thyroid substance.

Q. Is it a formula or is it thyroid?

A. It is thyroid substance desiccated. There are also other preparations in which thyroid is merely an ingredient in a combination.

Q. That you handle?

A. Yes, sir.

Q. What are those?

A. Well, there are several of them, one is thyrovarium, and there is also thyroid compounds called "Tabloid, Mixed Glands No. 1," and "Tabloid Mixed Glands No. 2."

Q. Do those thyroid products that you have named, put out by your company such as you have named, enter into commerce?

A. Yes.

Q. Are those thyroid products that you have named, put out by your company, such as are sold to the consuming public on doctors' prescriptions?

A. Yes, sir.

Q. May they also be purchased by the layman if they call for them by name?

A. Yes, sir.

Q. These gland products that you have named are likewise sold through your various wholesale drug outlets that you have named throughout the United States?

A. Oh, yes.

Q. Is the sale of these products quite extensive?

A. Quite extensive, relatively.

Mr. Michael: That is all.

Examiner Norwood: Cross-examine.

### ● Cross Examination

By Mr. Gust:

Q. What department of the business are you in, Mr. Fraser?

A. Why, I serve as assistant to the manager.

Q. These thyrovarium tabloids are plural; that is, as you put them out they contain thyroid and ovarium substances?

A. Yes.

Q. These Thyroid mixed glands No. 1 and thyroid mixed glands No. 2 contain thyroid, and, perhaps, pituitary and other things.

A. Yes, it is a mixed tabloid.

Q. In all of these plural glandular products as well as the desiccated thyroid, which are put out by Burroughs-Wellcome Company, they are ethical products, are they not?

A. Professional products; yes, sir.

Q. Do you term them professional or ethical?

A. Well, those terms are used—

Q. (Interposing) Interchangeably?

A. Yes.

Q. The so-called "professional product" means a product which is exploited by means of contact with the physicians?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Do you advertise it only to physicians?

A. That is right.

Q. That is all?

A. The drug trade perhaps, a little, but very little.

Q. You do not put any of these out as proprietary or patent medicines, do you?

A. No, sir. I might qualify that by saying that there are no indications on our labels as to what they are to be used for, nor the other indications, but only the dosage.

Q. Your label does not recommend it for any internal diseases at all?

A. No, sir.

Q. In other words, your method of operation is that they are put out ultimately into the hands of drug clerks and dispensed by physicians' prescriptions, in the main?

A. Yes, sir.

Q. Unless some user has found out what he wants to buy through some source. The Burroughs-Wellcome Company does not advertise what thyroid is good for, or what ovarium is good for, do they?

A. That is correct.

Q. I do not suppose you brought one of your labels with you?

A. No, I have not.

Mr. Gust: That is all.

Mr. Michael: That is all.

Examiner Norwood: You are excused.



(Witness excused.)

Examiner Norwood: What is your pleasure, gentlemen?

Mr. Michael: If your Honor please, I have nothing to present until 2 o'clock. Therefore, I would request a recess for lunch until 2 o'clock of this same day.

Examiner Norwood: In view of statement of Counsel, a recess will now be taken until 2 o'clock.

(Thereupon a recess was taken until 2 o'clock p. m. of the same day.)

### AFTERNOON SESSION

2 P. M.

Examine Norwood: The hearing will come to order. You may proceed gentlemen.

Mr. Michael: I will call Mr. White as my first witness for the afternoon.

CHARLES W. WHITE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### • Direct Examination

By Mr. Michael:

Q. What is your name?

A. Charles W. White.

Q. With whom are you connected?

A. McFadden Publications, Inc.

Q. In what business are you engaged, Mr. White?

A. In the publishing business.

Q. What is the exact name of the company or companies with whom you are connected?

A. There are two of them. One is called the MacFad-

den Company; that is, MacFadden Book Company, and the other is called the MacFadden Publishing Company.

Q. Are those names the official corporate names?

A. They are.

Q. Are they two companies?

A. One is a subsidiary of the other. I work for both companies. That is why I mentioned them.

Q. Where are these companies located; that is, where is their head office?

A. 1926 Broadway.

Q. New York City?

A. Yes.

Q. Among other things, are these companies engaged in the publication and sale of books?

A. Yes, sir.

Q. Does either of these companies publish and sell, for sale to the general public, a book on reducing containing reducing diets or diet and directions?

A. Yes.

Q. What is the name of that book?

A. "No More Alibis."

Q. Who is the author of it?

A. Madame Sylvia Leitner.

Q. Does she have a nom de plume?

A. She is known as "Madame Sylvia of Hollywood."

Q. Is that the name under which this book is published?

A. The book is published, yes, under the name of "Madame Sylvia."

Q. How long has that book been published and sold?

A. Since July, 1924—I beg your pardon, 1934.

Q. Has it had an extensive sale?

A. I should say so. I should say it has, concerning the type of book that it is.

Q. How general in territorial extent has that sale been?

A. Well, it has been advertised and sold. It has been advertised in most all of our magazines and sold all over the country and outside of the country; outside of the United States of America.

Q. Does your company also publish magazines?

A. That is right.

Q. What magazines does your company publish?

A. "True Story," "Physical Culture," "Liberty," "True Detective Mysteries," "Photoplay," "Movie Mirror," "Radio Mirror," and, there may be some that I have forgotten.

Q. Has this book by Madame Sylvia been advertised for reducing?

Mr. Gust: I object to that. The advertisements are the best evidence of their claims.

Examiner Norwood: He can tell the facts, I think. As to what the purpose of what this advertising was, and in regard to the recommendations of this book for certain uses. The objection is overruled.

The Witness: Yes. It has been so recommended.

By Mr. Michael:

Q. In the advertisements?

A. Yes.

Q. In what of your magazines have these advertisements appeared?

A. It appeared in practically all of them that I have mentioned with the exception of the detective magazines and "True Story." We get out two detective magazines, one known as the "Master Detective," and the other known as "True Detective Mysteries."

Q. The magazines in which those advertisements appear, were they all of general circulation throughout the United States?

A. Yes.

Q. Is the circulation of those magazines large?

A. Very large.

Q. Are you familiar with Madame Sylvia's book?

A. I am.

Q. Has that book been, and is that book one that includes directions for reducing by diet and exercise?

Mr. Gust: The same objection to that. The book speaks for itself. The book is the best evidence.

Examiner Norwood: Overruled:

By Mr. Michael:

Q. Answer.

A. It does.

Mr. Gust: Move to strike.

Examiner Norwood: Are you going to put this book in evidence?

Mr. Michael: No. It is just the general question as to whether it does contain certain subject matter.

Examiner Norwood: Objection overruled.

The Witness: It does; diet and exercise.

Mr. Michael: That is all.

Mr. Gust: No questions.

Examiner Norwood: You may be excused.

(Witness excused.)

Mr. Michael: I will call as my next witness Mr. E. Albert Royer.

E. ALBERT ROYER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Michael:

Q. What is your name?

A. E. Albert Royer.

Q. With what business are you connected?

A. I am connected with the Hay System, Inc.

Q. Of what address?

A. 30 Fifth Avenue.

Q. New York?

A. New York.

Q. Mr. Hay—

A. Mr. Royer.

Q. Mr. Royer, what is your business?

A. Well, in part, publishing.

Q. With what company or concern did you say you are connected?

A. The Hay System, Inc.

Q. Where is the head office of that concern located?

A. At No. 30 Fifth Avenue, New York City, N. Y.

Q. In what business, generally speaking, is the Hay System, Inc., engaged?

A. Well, we work under the supervision of Dr. William Howard Hay, Sanitaria conducted where people are given treatment; and, publishing.

Q. What is your official position?

A. I am office manager for the New York office.

Q. Is that the office where the publishing end of the business is handled?



A. All of it, yes.

Q. How long have you been connected with that company, the Hay System, Inc.

A. For almost 3 years; that is, not with the Hay System. The Hay System was incorporated January 1, 1934. But, I was associated with Dr. Hay before that was formed.

Q. Was the business the same before it was incorporated?

A. Exactly, yes.

Q. The same line of business?

A. That is it.

Q. Does your company publish and sell a book on reducing by means of diet?

A. Yes.

Q. What is that book called?

A. "Weight Control."

Q. "Weight Control"?

A. Yes.

Q. Who is the author of that book?

A. Dr. William Howard Hay.

Q. Is Dr. William Howard Hay a physician?

A. Yes, sir. He is registered in New York State.

Q. How long has that book been published?

A. Well, the book has only been published from three to four months. The book, itself, was taken from medical articles which ran serially at the beginning of the year.

(Short discussion off the record.)

Q. Did you finish your answer?

A. Yes.

Q. Do you mean the year 1935?

A. Yes.

Q. In what magazine did that series of articles run?

A. The magazine is known as the "Hay System News."

Q. Is that magazine published by your company?

A. Yes, it is, by the Hay System, Inc.

Q. Has the book, since its introduction, had an extensive sale?

A. Well, as far as could be expected in that short length of time.

Q. Has the sale been throughout the United States, generally?

A. Yes, and Canada also.

Q. Are those books when they are sold, shipped from your offices here to the various customers you have throughout the United States?

A. Yes, directly to wholesale distributors, and we ship directly from the office to direct mail inquiries or orders.

Q. To the ultimate purchaser?

A. Yes.

Q. What is your other method of sale besides to purchasers direct?

A. Well, it is sold through the book stores and the big department stores in their book departments of these department stores, and is handled by our Canadian office in Canada.

Q. Does the magazine in which the serial articles were published have a wide circulation?

A. Yes, it does.

Q. Is the circulation list large or small?

A. Well, in proportion to—well, at the present time, the magazine is applicable to people interested in Dr. Hay's work, but it is being enlarged to include persons who are interested in any phase of health.

Q. Does it circulate throughout the country?

A. Yes. It does.

Q. Has that book, since it has been published in book form, been advertised in that magazine, or otherwise?

A. Well, it has been advertised in the magazine and through the wholesalers, their own mediums, their own salesmen, on the road.

Q. What advertising has been done to the general public besides the advertising in the Hay News magazine?

A. None, so far as appearing in other magazines or other publications. ✓

Q. But, it has been advertised in the Hay System magazine?

A. Yes. It has been.

A. And through direct-selling methods, has it?

A. Yes.

Q. Through salesmen to the public?

A. Yes. You see, there was quite a demand for it. It was the culmination of requests for something specific on weight reduction, and we started it as a magazine article.

Q. Was it advertised as a weight-reduction book in these advertisements in the magazine?

A. Yes.

Q. Did your company, or has your company published any other book?

A. Yes, we have; it is the "New Health Era."

Q. The "New Health Era"?

A. The "New Health Era."

Q. Who is the author of that?

A. William Howard Hay, M. D.

Q. How long has that been on sale?

A. That has been on sale I think since either November or December, 1932.

Q. Has that had an extensive sale?

A. Yes.

Q. How general has the sale been?

A. Well, it has been national. It is distributed in Canada. It is shipped to the George Harris Company. It is bound in London. We ship the flat sheets to them and they bind them.

Q. Has that book been, and is that book shipped from your office here to purchasers throughout the United States?

A. Yes, entirely.

Q. Is that book sold both direct to the purchasing public and through book stores?

A. Yes, it is.

Q. Do you have any advertising media for this book for those in book stores other than the books, themselves?

A. Yes, we have literature and folders on the book, and and also it is included in a series of publications.

Q. Are you familiar with Dr. Hay's book known as the "New Health Era?"

A. Yes.

Q. Does that book, generally speaking, contain directions for diet which will result in reduction of weight?

Mr. Gust: That is objected to, if the Court please.

Examiner Norwood: Objection overruled.

Mr. Gust: For the further reason that this witness has not been qualified as to whether or not it will result in a direction of weight. My objection is a two-fold one.

First: The book is the best evidence of what they claim for it. Second:—The second reason is that the particular question calls for this witness' conclusion as to the effect of the book and of the diet therein contained, if there be one.

Mr. Michael: Which are calculated or intended to result in reduction of weight?

Examiner Norwood: I think he can describe this gen-

erally. He is not asked to give its specific rules or anything like that, of which the book would be the best evidence. Objection overruled.

The Witness: Well, generally, the book has done this, and explains Dr. Hay's theory on weight reduction, as a portion of it. It has other things in it.

By Mr. Michael:

Q. Does that book contain a diet and directions, generally speaking, which eliminate from the diet, in part, at least, or in large part, meats and carbohydrates which are fat-producing foods?

Mr. Gust: The same objection.

Examiner Norwood: Off the record.

(Discussion off the record.)

Examiner Norwood: Read the question.

(Question read.)

Examiner Norwood: I sustain that objection.

By Mr. Michael:

Q. Mr. Royer, in your work as office manager of the Hay System, Inc., have you had charge of the sales and the attention to correspondence and contacts with the customers in the trade?

A. Yes, I have.

Q. Have you found, since this book of Dr. Hay's has been on the market, from your contacts with those purchasers to whom you sell, that it has been used by people who have bought it for weight-reducing purposes?

Mr. Gust: I object to that, if Your Honor please, as not being proper. That is not the proper way to prove that. If they had any such correspondence that is the best evidence of what it contains.

Mr. Michael: I am speaking about all of his sources of information that he has gained in the office.



Examiner Norwood: Read the question.

(Question read.)

Examiner Norwood: Objection overruled.

By Mr. Michael:

Q. Answer the question.

A. From my contact with people and with correspondence, I would say that it has been used for that, to the extent that the need was felt for a specific work on that subject.

Q. And this new book resulted?

A. Yes.

By Examiner Norwood:

Q. In other words, you received statements from your customers in letters and otherwise, that they were using these statements therein contained for reducing?

A. Yes, sir; they have, with results that they have accomplished later, and which was included in the same information.

Q. Your testimony is based on those statements and reactions from your trade; is that right?

A. Yes, sir.

Mr. Gust: I move to strike it out, it appearing that it is all hearsay.

Examiner Norwood: Objection overruled.

Mr. Michael: That is all.

Examiner Norwood: Cross-examine.

Mr. Gust: No questions.

Mr. Michael: That is all I have for the witness.

Examiner Norwood: You are excused.

(Witness excused.)

Mr. Michael: I will call as my next witness Mr. Shelley Braverman.

SHELLEY BRAVERMAN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Michael:

Q. What is your name?

A. Shelley Braverman.

Q. With what business are you connected?

A. American Clinical Laboratories, Inc.

Q. In what business are you engaged, Mr. Braverman?

A. I am the—I am engaged in the manufacture and sale of druggists' cosmetics and, principally, Retardo.

Q. Is that an individual operation, or is your business incorporated?

A. Incorporation.

Q. What is the exact name of the incorporation?

A. The American Clinical Laboratories, Inc.

Q. Where are the offices of your company?

A. Well, at the present time they are in Flushing. Up to last Friday they were in New York.

Q. Flushing, Long Island?

A. Yes, sir.

Q. What is the address?

A. 149-40 Roosevelt Avenue, Flushing, Long Island, New York.

Q. Where were they prior to your removal to Flushing, New York?

A. No. 271 Madison Avenue, Manhattan, New York, N. Y.

Q. In your business or in your company's business, do you prepare or have prepared and do you sell a preparation for reducing purposes?

A. Yes.

Q. What is the name of that preparation?

A. Retardo, R-e-t-a-r-d-o.

Q. Does that preparation contain any thyroid in any form?

A. No. That does not and never has.

Q. Does it contain any dinitrophenol?

A. Same answer as to the first one; it does not and never has.

Q. How long has that product been on sale?

A. About 2½ years.

Q. Is it advertised and sold for reducing purposes?

A. Oh, yes, very extensively.

Q. How extensively territorially has been the sale of this product?

A. In every State of the Union, Alaska, Tahiti, Lima, Peru.

Q. Have the sales been in large volume?

A. Well, it is a difficult question to answer. I can give you the figures. We sold approximately 60,000 to 70,000 boxes last year.

Q. That is, 1935?

A. Pardon?

Q. That is, 1935?

A. That is the period ending—yes, 1935.

Q. For what price does your product sell at retail?

A. One dollar.

Q. One dollar?

A. Yes.

Q. What is your method of sale?

A. I do not understand your question.

Q. Do you sell direct to the consuming public or do you sell through dealers or houses or how?

A. Both; the advertisements are worded: "Get Retardo at your neighborhood druggist. If he cannot supply you send one dollar direct." So, about 75 percent of our business is through the trade; that is, what I would call the wholesale trade, and I suppose about 25 percent is direct to the consumer. Those are very rough figures.

Q. Is it advertised for reducing purposes?

A. Oh, yes.

Q. What media do you use to advertise it for that purpose?

A. You mean, what type of media?

Q. Yes.

A. With the exception of billboards and matches, I think we have used every known form including radio, magazines, newspapers, counter displays, window streamers.

Q. Do you use newspaper and magazine advertisements?

A. Yes.

Q. What type of publications have you used?

A. Well, again, you get a cross-section. We have used the "News," the "Mirror," and then, oh, about fifty or sixty smaller newspapers such as the Philadelphia "Eagle," the Philadelphia "Bulletin," and as for magazines we have used the movie type, I suppose you would call them, such as "Screen Secrets," "Modern Movies," and that type of magazine; and, also, the mail-order type, such as the "Gentlewoman."

Q. Are those magazines and newspapers of general circulation throughout the United States?

A. Not all of them.

Q. Are some of them?

A. Oh, yes.

Q. Do most of them circulate in more than their own locality where they are published?

A. With very few exceptions all of them have a wide circulation. We pick the papers of larger circulation.

Q. In large cities?

A. In large cities.

Q. When your product is sold, you ship it from your office here in the city and State of New York to the purchasers thereof whether they be members of the consuming public or stores or wholesale houses?

A. Frequently, occasionally, when business gets very large, we maintain a separate shipping department, and occasionally we have used Parke Davis & Company to manufacture the goods for us when our business is very very good, and ordinarily we ship from New York except when business is very big, when we ship it from their place directly.

Q. It is shipped from your office or one of your offices in the State of New York?

A. Yes.

Q. To your purchasers wherever they may be?

A. Yes.

By Examiner Norwood:

Q. Do you ship it into other States besides the State of manufacture?

A. Do we ship it to other States?

Q. Do you ship it into other States?

A. Yes, we ship into other States.

Examiner Norwood: That is all.

Mr. Michael: That is all.

Examiner Norwood: Cross-examine.



## Cross Examination

By Mr. Gust:

Q. Mr. Braverman, I think you said your company was the American Clinical Laboratories, Inc.?

A. Yes.

Q. Are you an officer of the company?

A. Yes.

Q. What?

A. President.

Q. President of it?

A. Yes.

Q. Were you the owner of the business before incorporating?

A. Yes.

Q. Do you publish your formula?

A. No.

Q. Is it a secret formula?

A. Well, other people besides myself know it, but I would prefer to call it a secret formula.

Q. You prefer not to disclose what it is?

A. Naturally.

Q. You do not put it on the package?

A. No. Other people that have no financial interest in the formula, such as certain representatives of various boards of health throughout the country, you know, force us to tell them what is in it.

Q. Are you a doctor yourself?

A. No, sir.

Q. Do you have any other preparations besides Retardo?

A. Yes, several.

Q. What are they?

A. Well, we have a follicide that poisons the hair without poisoning the person. We have also an antiseptic that is 208 times as strong as phenol. That is not on the market actively as yet. I have a local styptic that is used by barbers.

Q. Do you have any other internal medicants?

A. One which is not of any particular commercial significance as yet that we have developed to prevent nausea in women that have morning sickness, also seasickness. It is a stomach sedative.

Q. Do you manufacture these products or do you have them manufactured for you?

A. Usually I manufacture, or we manufacture them in our own laboratory down in Flushing until the sale gets so large that we can make more money by having them manufactured on the outside, in which case they are manufactured under a contract with Parke, Davis & Company. We have a contract and Parke-Davis makes it for us.

Mr. Gust: I think that is all.

Mr. Michael: Nothing further.

Examiner Norwood: You may be excused.

(Witness excused.)

Mr. Michael: Mr. Examiner, may I recall Mr. Braverman? I hesitated to ask him some questions because I did not want to go into the field of the witness revealing his formula, but there is a matter I want to ask about that I do not intend to open beyond that; I do not intend to open up that subject as to the ingredients of the formula which he says is a secret.

Examiner Norwood: I think that is all right. You may proceed.

SHELLEY BRAVERMAN was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

### Direct Examination

By Mr. Michael:

Q. Mr. Braverman, do you claim in regard to your reducing medicine that there is any ingredient in it that acts upon the body, or tissues of the body directly that causes a reduction in weight?

A. No.

Mr. Gust: I object to that unless he discloses what the ingredient is, and move to strike the answer.

Mr. Michael: We don't know whether he claims there is such an ingredient.

Examiner Norwood: He can state the general proposition with regard to this medicine, and tell what he sells it for, and what his selling claims are without going into the formula.

Mr. Gust: I object to that question in the way that it was framed, because I think it is improper.

Examiner Norwood: Overruled.

The Witness: I am perfectly willing to tell you what type of chemical it is.

Examiner Norwood: Read the question.

(Question read.)

Examiner Norwood: Objection overruled.

The Witness: No.

By Mr. Michael:

Q. Do you have a theory or claim as to how your preparation works in effecting reduction?

A. Yes.

Q. What is that?

A. Certain portions of the food, in order to make the body fatter have to be emulsified in the intestines before they are absorbed. There are certain mineral salts in my preparation which tend to do: First, prevent emulsification of a certain amount of the fluids; second, after these foods are emulsified, to tend to break down that emulsion. Therefore, the product acts upon the food and upon the digestive emulsifying agent and not on the body. Therefore, the body does not get these necessary ingredients for fattening, and it reduces itself.

That works, believe it or not.

Mr. Michael: That is all.

### Cross Examination

By Mr. Gust:

Q. What do you mean when you say that you have in your preparation something that aids in emulsifying?

A. I have never claimed that it aids in emulsifying anything. I claim just the reverse.

Q. What do you mean by that? What do you claim that you have in your product that prevents emulsification?

Mr. Michael: I object.

The Witness: I can tell you that very easily.

Examiner Norwood: Objection overruled.

The Witness: May I continue?

Examiner Norwood: Yes.

The Witness: Mineral salts, any mineral salt will tend to break down the emulsification and what I shopped around for is a mineral salt that is not absorbed by the tissues, and, therefore, can do no harm.

By Mr. Gust: Have you got your package with you?

A. No. I will send you one if you like.

Q. I can get it if we need it on the open market.

A. Thank you.

Mr. Gust: Nothing further.

Mr. Michael: Nothing further.

Examiner Norwood: You may be excused. Call your next.

(Witness excused.)

Mr. Michael: Mr. Examiner, I now desire to recall Dr. Damrau, who was sworn and testified at the previous session in this case.

Examiner Norwood: Proceed.

DR. FREDERIC DAMRAU was thereupon recalled<sup>a</sup> as a witness for the Commission, and, having been previously sworn, testified further as follows:

#### Direct Examination

By Mr. Michael:

Q. Dr. Damrau, on cross-examination by opposing counsel, you were asked for a copy of the formula of Welch's Grape Juice, and the same was put in evidence from a clipping from the booklet written by you, as stated in the testimony this morning, entitled "Welch's Grape Juice, An original study of its use for obesity and other valuable health properties," written by you.

A. Yes.

Q. I will hand you this booklet, which I will ask the Reporter to mark for identification as Commission's Exhibit No. 10.

Examiner Norwood: That may be done.

(The document referred to, a booklet entitled "Welch's Grape Juice, An Original study of its use for obesity and other valuable health properties," was marked "Commission's Exhibit 10," for identification.)

By Mr. Michael:



Q. I will ask you to state whether or not this is the booklet written by you about which you testified this morning, and from which the formula was taken?

A. Yes, sir.

Mr. Michael: Mr. Examiner, I offer this booklet in evidence, which has just been identified by the witness, and which has been marked for identification as Commission's Exhibit No. 10.

(There was a discussion off the record.)

Mr. Michael: It is agreed by and between Counsel that in the event the exhibit now offered, marked Commission's Exhibit 10, for identification, is received in evidence, that in the event of court proceedings hereafter said exhibit may be filed as a physical exhibit and printing of the same will be waived if permitted by the court.

Mr. Gust: With that agreement I have no objection to its admission.

Examiner Norwood: The exhibit is received in evidence and may be marked as Commission's Exhibit No. 10.

(The booklet heretofore marked for identification "Commission's Exhibit 10," was received in evidence.)

By Mr. Michael:

Q. Dr. Damrau, in addition to the booklet which you have just identified which has been received in evidence as Commission's Exhibit No. 10, did you ever write and prepare any other booklet which has been published by the Welch Grape Juice Company on the use of Welch's Grape Juice in reducing?

A. Yes. I wrote a booklet for the general public.

Q. What was that called?

A. "Keep Fit and Slender."

Q. For whom was the booklet, now in evidence as Com-

mission's Exhibit 10 prepared, and to whom has it been exhibited or sent?

A. The Exhibit No. 10 was prepared for the medical profession and was sent to physicians on request.

Q. I now hand you this booklet, which I will ask the Reporter to mark as Commission's Exhibit No. 11, for identification.

(The booklet entitled "Keep Fit and Slender—How to take off 7 pounds a month the Welch Grape Juice Way, by Frederic Damrau, M. D.—Children need blood and bone builders," was marked "Commission's Exhibit 11," for identification.)

By Mr. Michael:

Q. I will ask you to examine that booklet; is that one which you wrote?

A. Yes.

Q. And which you have just testified was intended for distribution to the general public?

A. That is correct.

Mr. Michael: Mr. Examiner, I offer this booklet in evidence which has been identified by the witness and marked for identification as Commission's Exhibit 11.

Mr. Gust: Are you making the same agreement as to, and stipulation, as to the printing of it in that it may be considered as a physical exhibit?

Mr. Michael: How is that?

Mr. Gust: Will you make the same agreement and stipulation as to treating it as a physical exhibit?

Mr. Michael: Yes; just the same as the previous exhibit.

Examiner Norwood: It will be received as Commission's Exhibit No. 11.

(The booklet referred to, heretofore marked for iden-

tification "Commission's Exhibit 11," was received in evidence.)

By Mr. Michael:

Q. Has that booklet, Commission's Exhibit No. 11, been distributed to the general public?

A. It has. It has been distributed, I am informed, through the advertising agency and through the Welch Grape Juice Company on request, and I have, also, mailed a number of copies in answer to requests that came to me direct by people who heard my radio broadcast, or who had a reference to my work by seeing it in the newspapers. These copies were mailed direct from my office.

Q. That is, to members of the purchasing public?

A. To members of the purchasing public.

Q. How long has this booklet, Commission's Exhibit 11, been distributed?

A. I cannot recall the exact date, but it was approximately April or May, 1935.

Q. Do you know whether or not it has been printed or distributed, or both, in large numbers?

A. I do not know of my own knowledge.

Q. That is handled by the company?

A. That is handled either by the Welch Grape Juice Company or the H. W. Kastor Agency of Chicago. And I believe some copies are mailed by the National Broadcasting Company.

Q. It is for use, generally speaking, in connection with your broadcasts to which you have testified in your previous testimony?

A. Yes, or use by broadcasts given by Irene Rich, which feature the Welch advertising. I appear not in all broadcasts but one broadcast out of four.

Q. How often do you appear?

A. Approximately every fourth broadcast.

Q. Once a week?

A. The broadcasts are once a week.

Q. And you appear once a month, approximately?

A. Approximately, once a month.

Q. Is that broadcast advertising concerning the use of Welch's Grape Juice for reducing purposes?

A. Not entirely, no. A great deal of it is devoted to the healthful properties of grape juice and improving haemoglobin, and supplying calcium. It is used as a beverage, and it is advertised for its use as a beverage, and its wholesome food qualities.

Q. But the reducing feature is emphasized as one of the functions?

A. It is emphasized as one of the functions.

Q. In all the broadcasts?

A. It has been in all the broadcasts in which I have appeared, personally.

Q. Do you know of its being emphasized in other broadcasts in which you did not appear?

A. Yes, in many of them.

Q. I will hand you a copy of "Good Housekeeping," of February, 1936, and ask you to look at page 200 and state whether or not there is a Welch's Grape Juice advertisement on that page, copy for which you were consulted about?

A. Yes, this advertisement was O. K.'d by me before it was used.

Q. I wish you would state whether or not that advertisement is typical of the general class of advertisements which you have approved for the Welch Grape Juice Company for its advertising of Welch's Grape Juice in connection with reducing?

Mr. Gust: That is objected to as calling for a conclusion of the witness.

The Witness: May I answer, in view of the objection?

Examiner Norwood: Just a moment.

Have you finished your objection?

Mr. Gust: I have finished my objection.

Examiner Norwood: On what ground?

Mr. Gust: On the ground that the other advertisements themselves are the best evidence of whether they are typical examples of that. This witness' opinion of that is not competent.

Examiner Norwood: Objection overruled. Now, you can answer.

The Witness: Yes, this is typical of Welch advertising which I have O. K.'d and seen published, with the exception that some of the other advertisements have laid more stress than this particular advertisement on the healthful and beneficial properties of Welch's grape juice as a food for children.

Mr. Michael: Mr. Reporter, I will ask you to mark for identification this advertisement which has just been referred to, as Commission's Exhibit No. 12, for identification.

Examiner Norwood: That may be done.

(The advertisement appearing on page 200 of "Good Housekeeping," for February, 1936, was marked, "Commission's Exhibit 12," for identification )

Mr. Michael: Mr. Examiner, I offer in evidence that advertisement, which has just been identified by the witness appearing in "Good Housekeeping" for February, 1936, and ask that it be received in evidence.

Examiner Norwood: This advertisement appears to be on page 200 of that issue?



Mr. Michael: Yes, sir.

Examiner Norwood: Any objection?

Mr. Gust: No.

Examiner Norwood: It is received as Commission's Exhibit No. 12.

(The document referred to, heretofore marked for identification "Commission's Exhibit 12," was received in evidence.)

By Mr. Michael:

Q. Dr. Damrau, I will hand you a section of the New York "Times" of Sunday, November 24, 1935, and ask you to state whether or not on page 11 that is an advertisement of Welch's Grape Juice for reducing purposes, which is typical of the advertisements in newspapers, copy for which you have approved and which you have seen published, and which I will ask the reporter to mark for identification as Commission's Exhibit No. 13.

A. Yes.

(The advertisement referred to was marked "Commission's Exhibit 13," for identification.)

The Witness: That is typical of the Welch newspaper advertisements which I have O. K.'d and which I have seen published.

Mr. Michael: Mr. Examiner, I offer in evidence this advertisement which has just been identified by the witness and which has been marked for identification as Commission's Exhibit No. 13.

Examiner Norwood: Any objection?

Mr. Gust: No objection.

Examiner Norwood: Without objection, it is received in evidence as Commission's Exhibit 13.

(The advertisement referred to, heretofore marked for

identification "Commission's Exhibit 13," was received in evidence.)

Mr. Michael: Shall it be agreed that the Reporter may cut this advertisement out and mark it properly?

Mr. Gust: No objection.

Examiner Norwood: That may be done.

Mr. Michael: Nothing further.

Examiner Norwood: You may cross-examine.

### Cross Examination

By Mr. Gust:

Dr. Damrau, on the first page of Commission's Exhibit 10 appears the statement that Welch's Grape Juice has been on the market since 1869.

A. Yes.

Q. That is a true statement, is it?

A. I have no way of knowing that. I accepted the statement of the Welch's Grape Juice Company in regard to it. In 1869 I was not living.

Q. That is your information as to when it was first put on the market; is it?

A. That is my information, yes.

Q. That you obtained from the Welch Grape Juice Company?

A. Yes.

Mr. Gust: Mr. Jones is here, Mr. Michael; would you mind if I asked him that question direct?

Mr. Michael: I am going to put him on the stand. You can then inquire of him if you desire.

Mr. Gust: Oh, you are?

Mr. Michael: Yes.

Mr. Gust: That is all.

Mr. Michael: That is all.

Examiner Norwood: You may be excused.

(Witness excused.)

Mr. Michael: Mr. Examiner, I would like to recall Mr. Jones as a witness.

He appeared this morning and was sworn at that time.

Mr. Gust: No objection.

Examiner Norwood: You may recall him.

Mr. Michael: Mr. Jones, will you take the stand?

S. C. JONES was thereupon called as a witness for the Commission, and, having been previously sworn, testified further as follows:

#### Direct Examination

By Mr. Michael:

Q. Mr. Jones, I will now hand you Commission's Exhibit No. 11.

A. Yes.

Q. I will ask you to state how that booklet is distributed and to whom it is distributed?

A. This booklet is distributed in several ways.

Q. Name them.

A. A number of them are supplied to Dr. Damrau.

Q. Yes.

A. He mails them out to personal requests.

Q. Yes.

A. Then, we mail from Westfield, N. Y., to those requests that come in through the radio stations direct, or through the newspaper advertisements. They go to the consumers or listeners in our radio broadcasts or newspaper advertisements.

Q. In what quantities have you had that booklet, Commission's Exhibit 11, printed?

A. To the best of my recollection, there was 100,000 of them printed.

Q. One hundred thousand?

A. Yes.

Q. Can you give us an estimate of the number that has been sent out?

A. I would not say without referring to our records.

Q. Could you venture an estimate?

A. No. It would be just a guess.

Q. Are they sent out by the thousands?

A. Well, I can say this: That we have as many as—we have had as many as 3,300, that was the largest number that we had after one broadcast. I believe that was the maximum.

Q. You have had large numbers of requests after each broadcast for this booklet?

A. Well, they vary. We have had just a few. They are not all just the same. The largest number comes after Dr. Damrad's personal message once a month.

Mr. Michael: That is all.

### Cross Examination

By Mr. Gust:

Q. Mr. Jones, the Welch Grape Juice Company was founded approximately 1869?

A. That is the official record of the company.

Q. Well, at least, you have been with them how long?

A. Four years.

Q. Four years?

A. Yes.

Q. According to your official records you have been putting this grape juice on the market since approximately 1869?

A. That is right.

Q. There are a number of other grape juices on the market, are there?

A. Yes.

Q. Are you familiar with the names of any of them?

A. Most of the brands on the market are private labels; that is, manufactured by various processors, usually small ones, and then sold to wholesalers and distributed by them.

Mr. Gust: That is all.

Examiner Norwood: Any re-direct?

Mr. Michael: Yes.

#### Re-direct Examination

By Mr. Michael:

Q. I just want to get the record clear, Mr. Jones.

A. Yes.

Q. Do you mean your company was incorporated in 1869, or that the business of marketing Welch's Grape Juice was started in 1869?

A. Started in 1869. I got this from Mr. Paul Welch, our president, that his grandfather, Dr. T. B. Welch, started the business, and that he was the first to employ pasteurization, I think that was about 4 years after Pasteur's research work resulted in what we know as "pasteurization"; in other words, he used heat to a certain degree to kill bacteria and thereby preserve the juice until wanted for consumption.

By Mr. Gust:

Q. That is, to prevent fermentation?

A. Yes.

By Mr. Michael:



Q. And from that beginning has come the present business?

A. Yes.

Q. And the present corporation?

A. Yes. We have, to my knowledge, the first price list which was 1875. That was by Dr. C. E. Welch, who was a son of Dr. T. B. Welch.

Examiner Norwood: I think we have sufficient in the record without going into that detail in regard to the matter.

Mr. Gust: Yes. I think that is sufficient. I just wanted to develop the matter.

Mr. Michael: I am satisfied.

Examiner Norwood: Anything further for this witness?

Mr. Gust: That is all.

Mr. Michael: Nothing further.

Examiner Norwood: You may be excused.

(Witness excused.)

Mr. Michael: I am through for the afternoon, if the Examiner please.

Examiner Norwood: What is your convenience for tomorrow?

Mr. Michael: Mr. Examiner, the next witness has been subpoenaed for 10 o'clock tomorrow morning, and he is expected at that time, and I presume he will be here.

Examiner Norwood: Do you have some for tomorrow afternoon?

Mr. Michael: We have witnesses that are subpoenaed until late in the morning, and I thought that, perhaps, if they were short like today we could keep on going until we had finished.

Examiner Norwood: Very well. Any objection to that procedure?

Mr. Gust: No objection. I would prefer it.

Examiner Norwood: In that case, gentlemen, we will adjourn until tomorrow morning at 10 o'clock. The hearing in this matter is, therefore, adjourned until 10 o'clock a. m. on February 7, 1936, to reconvene in this room, Room No. 823, at 45 Broadway, New York City, N. Y.

That will be all.

(Whereupon, at 4:10 o'clock p. m., February 6, 1936, the hearing in the above-entitled matter was adjourned.)

### PROCEEDINGS

(Continued February 7, 1936)

Examiner Norwood: The hearing will come to order pursuant to adjournment on yesterday.

Counsel for both sides are all present. You may call your first witness.

Mr. Michael: I will call as my first witness Dr. Sidney Newcomer.

DR. SIDNEY NEWCOMER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Michael:

Q. State your full name, please, Dr. Newcomer.

A. Dr. H. Sidney Newcomer.

Q. What is your business or profession, Doctor?

A. Chief of the medical division of the Professional Service Department of E. R. Squibb & Sons.

Q. Where is the headquarters of your company; where is that located?

A. 245 Fifth Avenue, New York City, N. Y.

Q. Does your company maintain laboratories?

A. Yes.

Q. Where are they located?

A. In Brooklyn, N. Y., and in New Brunswick, N. J.

Q. What is the general nature of the business of E. R. Squibb & Sons?

A. Pharmaceutical chemists.

Q. What is the general line of products that they prepare, make, and handle?

A. They prepare certain special pharmaceutical products and biological products.

Q. Is the company engaged in the active sale of those products?

A. Yes.

Q. To the trade?

A. Yes.

Q. What is their method of sale?

A. Mostly to the medical profession, particularly in the biological products.

Q. To what others, if any, Dr. Newcomer?

A. They sell them to the drug trade, to the medical profession, but they detail them to the medical profession.

Q. What do you mean "they detail them to the medical profession"?

A. They send representatives to see doctors and interest them in their products.

Q. The sales are made to the drug trade?

A. The sales are made to the drug trade. Some sales are made directly to physicians.

Q. But the general sales are to the drug trade?

A. The general sales are to the drug trade.

Q. Does the company sell direct to retail drug stores, or other wholesale druggists?

A. It sells direct to certain retail druggists, and through jobbers and wholesalers, to others.

Q. Dr. Newcomer, will you state the territorial extent of the business of E. R. Squibb & Sons?

A. Throughout the United States, and we have some foreign business.

A. In making their sales, does the company ship its products that are sold from its various laboratories that you have named to customers located in other States than those where the laboratories are located?

A. It does, either directly or through its branches.

Q. Does your company prepare and sell any products that are used on prescription or otherwise for reducing purposes?

A. It does.

Q. And adapted to that purpose?

A. It does.

Q. I wish you would name, Dr. Newcomer, what products come within that class.

A. Alphadinitrophenol, Thyroxin, anterior Pituitary Extract.

Q. Is thyroxin a thyroid gland preparation?

A. It is prepared from the thyroid gland.

Q. Of animals?

A. Of animals.

Q. How is it prepared and sold; in tablets?

A. It is prepared and sold as a disodium salt, in tablet form, and as a pure crystallized thyroxin, in crystals, or in crystalline form. We also sell certain solutions, but for other purposes.

Q. The tablets of thyroxin, I wish you would state, as a physician, whether or not in prescribing that product it is prescribed as tablets and not mixed with other drugs?

A. Yes, it would be prescribed as tablets.

Q. Are these various products that you have mentioned, such as are shipped from your various laboratories and branch houses when they are sold to customers located in other States than the origin of the shipment?

A. I do not understand you?

Q. Are they shipped in interstate commerce?

A. Yes.

Q. From one State to another?

A. Yes. They are.

Q. Is the business in the sale of these various products that you have named extensive?

A. I do not know what you mean by that question.

By Examiner Norwood:

Q. Do they have a large business in them?

A. We have a moderate business in it. We have the exclusive business for thyroxin, as such, it being, I believe patented in some way, and it is held under license from the University of Minnesota.

Q. Who was the discoverer of that?

A. Kendal.

Q. Dr. Kendal?

A. Yes.

Q. What is his full name?

A. I could not tell you without looking up my notes. He is at the Mayo Foundation in Rochester, Minn., but the license comes from the University of Minnesota.

By Mr. Michael:

Q. Does your company prepare any of its thyroid preparations?

A. We prepare the thyroxin that we use.

Q. You prepare the thyroxin?

A. Yes.

Q. Do you do it under this license?

A. Yes.



Q. May these products that you have mentioned that are adapted and used for reducing purposes by physicians in prescribing for their patients, be bought by the layman if they call on the druggists for them by name?

A. They may.

Q. Or they may be bought by the layman on the presentation of a prescription from a doctor?

A. Yes, Alpha dinitrophenol, I believe, is limited to prescription sale in some States, now.

Q. That is also true of thyroid products?

A. I do not think so.

Mr. Gust: I object to that as being incompetent, immaterial, and irrelevant to any issue in this case.

Examiner Norwood: Objection overruled.

The Witness: I do not think so. I do not know.

By Mr. Michael:

Q. You are not actively connected with the sales end of the business of E. R. Squibb & Son?

A. I do not know of any States that limit the sale of thyroid products to prescription purposes.

Q. Do you know of any States that have regulations or ordinances of that kind?

Mr. Gust: I object. That is objected to, if the court please, as being incompetent, immaterial, and irrelevant to any issue in this proceeding.

Examiner Norwood: He can tell that if he knows it.

The Witness: I do not know it. I do not think so.

By Mr. Michael:

Q. It has not come to your attention, at least?

A. No.

Examiner Norwood: Off the record.

(There was a discussion off the record.)

Examiner Norwood: Back on the record. You may proceed.

By Mr. Michael:

Q. When you gave your answer in regard to the volume of business of these products, were you speaking in a relative sense as compared to the sale of drug products like quinine, for instance, and such drugs?

A. I was speaking of some of our glandular products such as insulin, for instance, which has an appreciably larger volume. It compares favorably with many of our glandular products in volume.

Q. It is not merely a small part of the business?

A. Oh, no.

Q. No?

A. No.

Mr. Michael: That is all.

Examiner Norwood: You may cross-examine.

### Cross Examination

By Mr. Gust:

Q. Dr. Newcomer, how long has E. R. Squibb & Sons been selling these various products, approximately?

A. It has been selling thyroxin, I should judge, for 10 years. I would not be positive about that.

Q. Anterior Pituitary Extract substance the same length of time?

A. No. It may be one or two years. I cannot be certain.

Q. Alphasitrophenol?

A. Alphasitrophenol, somewhere the same.

Q. Thyroxin is a professional product which E. R. Squibb & Sons sell to the medical profession; is that true?

A. Yes.

Q. It is advertised to the medical profession; is that true?

A. It is detailed to them. It is not advertised to them.

Q. It is not advertised at all?

A. No. I believe it is not advertised at all. I believe our license forbids us to advertise it.

Q. You do not advertise it to the general public, certainly?

A. No. We do not.

Q. Neither do you advertise alphasnitrophenol?

A. When you are talking about "advertising" you mean journal advertising?

Q. Yes.

A. We prepare literature and we detail to the physicians.

Q. You prepare literature and you detail to the physicians?

A. Yes.

Q. It is a so-called "ethical" product that you exploit by contact with physicians?

A. We include it in general glandular advertisements by that name.

Q. To the physicians?

A. Advertisements in medical journals.

Q. You have never advertised thyroxin to be a proprietary remedy to be taken by the public, have you?

A. No.

Mr. Gust: That is all.

Examiner Norwood: Re-direct?

Mr. Michael: Yes.

#### Re-direct Examination

By Mr. Michael:

Q. Dr. Newcomer, do you know the reason why you are forbidden to advertise thyroxin?

A. No. I could guess.

Q. What is that?

Mr. Gust: I object.

Examiner Norwood: I do not think that would be of any value. We want no guesses in this case.

Mr. Gust: I object. He has already stated he did not know.

Examiner Norwood: He has already stated, also, that his contract restricts him from advertising it.

The Witness: That is my opinion. I am not positive about that. I think it is so.

By Examiner Norwood:

Q. Would you say your company makes no drugs to be sold direct to the consumer?

A. Yes. We do.

Q. I mean, in packages to be sold without prescription?

A. Yes, sir. We do. Sodium bicarbonate.

Q. I mean by that, do they make these thyroid preparations?

A. Thyroid preparations are not made for sale directly to the public. They are available to the public in the drug stores if they wish to purchase them.

Q. That is the method that you use?

A. Yes.

Mr. Michael: There has been no ruling on the question asked the witness, if Your Honor please.

Examiner Norwood: Read the question and we will rule on it now.

(Question read.)

Examiner Norwood: The objection is sustained on that.

By Examiner Norwood:

Q. If you know that reason that is another matter.

A. Well—

By Mr. Michael:

Q. Dr. Newcomer, in your position with your company, is it among your duties to give advice, and do you determine the policies as to what is done in regard to the advertising of pharmaceuticals, such as thyroxin?

A. Biologicals—I review all advertising if it is ethical, or to see if it is ethical in character; that is, for its medical content. I would not have anything to do with, or at least I do not have anything to do with the contract which I believe we have, and under which, I believe, we do not advertise thyroxin in medical journals.

Q. You do not advertise it in medical journals?

A. I am of the impression that we have an agreement not to advertise it in the medical journals, but that agreement does not go so far as to prevent us promoting it in other ways which are available to us.

Q. How do you promote it?

A. We promote it by circularizing, by writing about it and describing it and promoting it in our house publications which go to all physicians, and by detail work.

Q. To whom do these circulars go?

A. They are advertised to the Medical Association—to the American Medical Association list of physicians, which is some 150,000 or some 160,000 physicians.

Q. Then there is no advertising done through druggists?

A. There are some types of direct advertising to drug stores, also, by house publications, and by advertising in journals, which includes thyroxin in its advertising.

Q. You were asked, on cross-examination, a question which implied that you sold thyroxin only to physicians. Is that the fact?

Mr. Gust: I object to that statement. I did not imply that.



Examiner Norwood: Well, he can ask him if that is the fact. Just ask him for the fact.

Mr. Gust: If the Court please, that may be proper to be elicited as a fact. However, it is not proper to be elicited by that sort of a question.

Mr. Michael: The word "only" was in the question, as I recall it.

Examiner Norwood: I think Counsel can reframe the question so that it will be satisfactory.

Mr. Gust: Very well.

Mr. Michael: I will try to do so.

By Mr. Michael:

Q. Dr. Newcomer, do you sell thyroxin and these other products that you have named only to physicians?

A. We sell them to druggists and to the physicians, but I should say principally to the druggists.

Q. This thyroxin preparation is put up in tablet form?

A. Yes.

Q. What size bottles is it, as to the number of tablets therein contained?

A. One hundred.

Q. One hundred?

A. One hundred.

Q. Is the name of the product on those bottles?

A. Yes.

Q. As a physician, Dr. Newcomer, I wish you would state whether or not when such tablets are prescribed the name of the product would be written on the prescription by name?

Mr. Gust: I object to that as being purely a hypothetical question. I doubt if Dr. Newcomer would know that. I think any doctor writing a prescription may follow his own desires in that regard.

Examiner Norwood: If he knows the custom on that he can state what the custom is in his opinion. The objection is overruled.

The Witness: I do not see how there could be any other way of prescribing it except by name.

By Mr. Michael:

Q. And the prescription might call for the whole bottle of 100 tablets which would be sold in the original container?

A. It might.

Q. There would be nothing, then, to prevent the person for whom such a product had been so prescribed from buying a bottle of thyroxin if he wanted a bottle of it?

A. Nothing to prevent.

Q. Dr. Newcomer, what is your professional opinion as to the propriety of advertising thyroxin to the general public?

Mr. Gust: I object to that as incompetent, immaterial, and irrelevant in this proceeding.

Examiner Norwood: Objection sustained.

As a dealer and a competitor of this Respondent he can give his attitude to the practice of selling thyroxin and under what terms and conditions he thinks it should be done so far as the same may be based upon the public policy, or results of his study; or, thirdly, upon the generally accepted moral grounds.

If he has anything to do with the establishing of the policy of selling this and their attitude has been expressed in any way, and if he knows it he can tell it, and he can do that.

Just for his conclusion or opinion about the advertising I think that is going a little too far.

By Mr. Michael:

Q. Dr. Newcomer, what is your attitude as a member of the E. R. Squibb & Sons organization as to the promotion of the sale of thyroxin or similar glandular products to the general public?

Mr. Gust: That is objected to, if the Court please, as being wholly incompetent, immaterial, and irrelevant to any issue in this case.

Examiner Norwood: Objection overruled.

The Witness: We would never do it, and never have.

Mr. Gust: Same objection, incompetent, immaterial, and irrelevant.

Examiner Norwood: Objection overruled.

By Mr. Michael:

Q. What is the answer?

A. We would never do it.

Q. Why?

A. We would not think it was wise to allow self-medication by thyroxin.

Q. Why not?

A. No more than we do with certain other preparations which we have sought to prevent the general distribution of, although it is cutting down our business in those products.

Q. Why do you not think it is wise?

Mr. Gust: That is objected to as wholly incompetent, immaterial, and irrelevant.

Examiner Norwood: Objection overruled.

By Mr. Michael:

Q. Why do you not think it is wise?

A. I think I ought to say in answering this question that many of our sales policies are influenced, as far as professional products are concerned, are influenced by what we consider to be the general good of the public, and the profession, from the medical point of view. We,

therefore, seek to avoid our products being used for purposes which medical authorities believe to be detrimental. We would consider, as far as thyroxin is concerned, that it should not be taken indiscriminately by the public because of the toxic symptoms that would come from overdoses and injuries to the vascular system, and the heart.

By Examiner Norwood:

Q. As I understand it, Dr. Newcomer, your company refrains from selling the thyroid preparations in packages to go directly to the consumer; is that right?

A. Oh, yes. That is right. Does not mean that we would prevent them from buying the product.

Q. When you put them in those packages, do you put any notices or warnings of the nature of the product or preparation in it?

A. We do not, except in the literature, but in the literature we do.

Q. What do you do in the literature?

A. The literature accompanies the package but is not on the label. The literature warns of the toxic symptoms that come from overdoses.

Q. Can you tell us on what grounds? Are they business grounds or moral considerations that cause your company to refrain from doing that.

Mr. Gust: Your Honor understands, I object to the Examiner's questions as well as Counsel's questions on that point.

Examiner Norwood: Yes. The objection is overruled.

The Witness: That question is hard to answer because the question is: How much is good business in our business? We think good business is coupled with good morals.

By Examiner Norwood:

Q. I am speaking on what business grounds do you think it is right or wrong to do so? Just what factors entered into that consideration?

A. We think it harms our business to seek to promote anything in a manner which good medical opinion would disapprove of.

A. It harms the business because the doctors would disapprove of it?

A. It harms the business because the doctors would disapprove of it and would rely less on our opinion in the future.

Q. And you would get less business from the doctors, or you think that you might?

A. Yes.

Q. Have the manufacturing druggists, or any association of manufacturing druggists, ever expressed themselves on that point?

A. I do not know. I think it is a house policy, principally.

Examiner Norwood: Proceed.

By Mr. Michael:

Q. Dr. Newcomer, do you also, in behalf of your business, take into consideration the moral question involved in selling a dangerous drug indiscriminately to the purchasing public?

Mr. Gust: The same objection to that question, if the Court please, as being incompetent, immaterial, and irrelevant.

Examiner Norwood: Objection overruled.

By Mr. Michael:

Q. Answer the question.

A. What is the question?

Mr. Michael: Let the question be read.

(Question read.)



The Witness: I should think we do.

By Mr. Michael:

Q. Do you consider thyroxin a dangerous drug for self-medication?

A. We do.

Mr. Gust: I object to that as incompetent, immaterial, and irrelevant, and move to strike the answer.

Examiner Norwood: I believe he is qualified as an expert to answer that.

Mr. Michael: He sells it. He say he is a medical adviser for the company.

Examiner Norwood: Yes.

Mr. Michael: And I am asking him, as representing the company, whether he considers this as a dangerous drug.

Examiner Norwood: You are asking him as to his product.

Mr. Michael: Yes, sir. As to his product.

Examiner Norwood: Objection overruled. Answer the question.

The Witness: I answered yes.

By Examiner Norwood:

Q. Yes?

A. Yes.

Mr. Michael: That is all.

Examiner Norwood: Cross-examination.

### Re-cross Examination

By Mr. Gust:

Q. Dr. Newcomer, how do you standardize thyroxin, as to its iodine content?

A. No, as to its biological activities.

Q. Primarily, how much more potent is it than desiccated thyroid?

A. One half grain of desiccated thyroid is approximately equivalent to two tenths milligram of thyroxin, or 2/320 of a grain.

Mr. Gust: That is all.

#### Re-direct Examination

By Mr. Michael:

Q. Is it correct that thyroxin is put up in smaller dosages than desiccated thyroid?

A. Yes.

Mr. Michael: That is all.

Examiner Norwood: Re-cross?

#### Re-cross Examination

By Mr. Gust:

Q. What size tablets is this supplied; in what size tablets does E. R. Squibb & Company put it out?

A. .2, .4, .8.

Mr. Gust: That is all.

Examiner Norwood: Any re-direct?

Mr. Michael: Yes.

#### Re-direct Examination

By Mr. Michael:

Q. Of what?

A. Of a milligram. Let me just refer to this to be sure about that, We have also, 2 milligrams.

Q. Is any one of these tablets equivalent to a one half grain of desiccated thyroid?

A. Two tenths of a milligram is equivalent to one

half grain.

(There was a short discussion off the record.)

Mr. Michael: That is all.

Examiner Norwood: Any re-cross?

Mr. Gust: Yes.

### Re-cross Examination

By Mr. Gust:

Q. Mr. Newcomer, does E. R. Squibb & Company do any private formula business?

A. You mean by that, secret formula business?

Q. Yes.

A. Practically none.

Q. Do you make secret formulas for any other company?

A. No.

Mr. Gust: I believe that is all.

Mr. Michael: Nothing further.

Examiner Norwood: That will be all.

(Witness excused.)

Examiner Norwood: We will take a recess for 5 minutes.

(There was a short recess taken.)

Examiner Norwood: Proceed.

Mr. Michael: I will call as my next witness Dr. C. F. Longfellow.

DR. C. F. LONGFELLOW was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Michael:

Q. What is your name?

A. Dr. C. F. Longfellow.

Q. What business or profession are you in, Dr. Longfellow?

A. By training and profession I am a physician.

Q. Are you engaged in the practice of medicine at the present time?

A. No.

Q. What business are you engaged in at the present time, individually?

A. Our firm, we are manufacturers of pharmaceuticals and biologicals.

Q. What is the name of the firm?

A. G. W. Carrick & Company.

Q. Where is that located; where is your company located?

A. 20 Mt. Pleasant Avenue, Newark, N. J.

Q. What is your connection with the company?

A. My corporate position is vice president. I serve as medical and scientific director of the company.

Q. Are you a physician, an M. D.?

A. I am.

Q. State what the general nature of the business of your company is?

A. The company is almost exclusively engaged in the manufacture of that class of substances known in the drug trade as endocrine substances.

Q. Does that include thyroid preparations?

A. It does.

Q. To what class of trade does your company sell its products including its thyroid products?

A. We sell, in the domestic market, to the wholesale drug trade; and, to some extent, to the retail drug trade; with the—shall I proceed?

Q. Go ahead.

A. Some small percentage of the business direct to physicians.

Q. Are these products, including your endocrine substances, sold through the retail and wholesale drug trade to the consuming public who use the product on prescription, or otherwise?

A. They are.

Q. What sort of a glandular product does your company prepare and sell, thyroid product?

A. We manufacture thyroid for the American market, domestic market, to meet the requirements of the United States Pharmacopœia, and it is marketed as "U.S.P. Thyroid."

For the United Kingdom and the kingdoms which are bound to follow the British Pharmacopœia, we manufacture and standardize the product according to the requirements of the British Pharmacopœia.

Q. Is your domestic product marketed in this country a desiccated thyroid?

A. It is.

Q. How is it put out?

A. It is marketed as a powder. It is marketed in capsules. It is marketed in compressed tablets.

Q. How are the tablets put out, in bottles or packages?



A. They are packaged in bottles; with a varying number of tablets and varying dosage.

Q. State what numbers of tablets are in the various packages?

A. In the the tablets, we have in the compressed tablets, I believe, that the usual number is 100, although there are several other sizes that I could not make a positive statement on without referring to the catalog or list.

Q. Are some of those other sizes smaller than 100?

A. I believe they are.

Q. How are the capsules, how are your capsules put out?

A. They are also marketed in bottles.

Q. How many to the bottle?

A. I believe the same number as the tablets.

Q. One hundred or less?

A. One hundred or fifty or forty. In the case of the tablets I believe more than 100. But, there are so many items on our list of that type that I would not make a positive statement without referring to the record.

Q. But you do know that you have 100's packaged?

A. Yes.

Q. And some of them are less than 100?

A. Yes.

Q. Do you have any of these capsules or tablets that are half-grain dosages?

A. We do.

Q. Is the name of the product on your packages?

A. Yes, indeed.

Q. What name is on the package?

A. "Thyroid U. S. P."

Q. You spoke of the company manufacturing pharmaceuticals?

A. Yes.

Q. Are these packages of thyroid tablets and capsules such pharmaceuticals as are usually sold to the purchasing public on a prescription from a physician?

A. They are.

Q. May those, and capsules of thyroid, such products as made by your company, be bought by members of the public by name, if they wish to, without a prescription?

A. I know of no restrictive legislation in any of the States which would prevent the public from buying thyroid, although there may be. I, personally, am not aware of it.

Q. Generally speaking, however, if a member of the public wanted your product and would go to a drug store where it is handled and call for it by name, would they get it?

A. Yes.

By Examiner Norwood:

Q. Is there anything on the package to show what it is to be taken for?

A. There is not.

By Mr. Michael:

Q. Are these thyroid preparations that you have named, sold by your company and shipped, upon sale, from your establishment to various other States where the customers may be located?

A. They are.

Q. Is the volume of the business in these thyroid preparations extensive?

A. I, in answer to that question, counsellor, I can only say that that is a relative thing. What may appear to be extensive in one company's business may not appear to be extensive in another. Thyroid, however, as it enters into

several of our products in addition to being sold only as thyroid, I believe it would be fair to say is a substantial part of our business:

Q. Perhaps you do not get my idea.

A. Perhaps.

Q. The thyroid items in your business are not minor, mere minor items; are they?

A. No. They are not.

Q. The business in the product is substantial?

A. It is.

By Examiner Norwood:

Q. Can you give us an estimate as to the amount of this you sell, or the number of dollars worth a year that you sell?

A. Why, yes, I can, in general. I would say that we manufacture, standardize, and sell, in the course of a year, in excess of 1,000 pounds of it.

Q. Does your company advertise in any way its thyroid preparations that you have mentioned?

A. We advertise our products to physicians. I do not know of any advertising directly on thyroid, itself, but on products containing thyroid in combination, yes, we do. We advertise it to the medical profession.

By Mr. Michael:

Q. How is the sale of your strictly thyroid preparation promoted?

A. It is promoted largely by our general advertising. It sets forth that we are manufacturers of endocrine substances.

Q. Is thyroid an endocrine substance?

A. Thyroid, yes, is an endocrine substance.

Q. To whom do such advertisements go?

A. They go to the medical profession, and, to a less extent, to the trade, to the drug trade.

Q. Both wholesale and retail?

A. Yes.

Q. Do you publish any circulars or literature on your endocrine substances, or on thyroid preparations?

A. We publish and distribute both circular matter or descriptive literature, and so-called direct-mail advertising. We publish a house organ dealing with these products, which is distributed to the medical profession.

Q. What advertising materials containing references to and descriptions of your thyroid preparations do you refer to?

A. To those.

Q. These advertisements, then, contain references to and descriptions of your thyroid preparations; is that correct?

A. They contain descriptions and informative matter as to the use of preparations which contain thyroid as a part of their formula.

Q. Did I understand you to say, Doctor, that you serve as a scientific advisor to the company and to its trade in regard to the company's products?

A. Yes.

Q. Do you get inquiries from physicians with regard to the use of your thyroid preparations for reducing purposes?

A. Yes, we do.

Q. Are those inquiries extensive?

A. Well, they are frequent. They come in—I am not prepared to give a percentage statement of the inquiries relating to any particular product or any particular subject relating to it, but the inquiries from the medi-

cal profession seeking information as to the use of thyroid in obesity are frequent.

Q. Do you attend to such correspondence and give advice on the subject in regard to the use of your preparations on that subject?

A. I do.

Q. Do you determine the policy of your company in that regard?

A. I alone, do not determine the policy of the company.

Q. I mean, in regard to the scientific advice for the use of these products for reducing purposes?

A. Yes.

Q. What is the attitude in that regard?

A. It—

Mr. Gust: That is objected to, if your honor please, as being wholly incompetent, immaterial, and irrelevant.

Examiner Norwood: Overruled.

By Mr. Michael:

Q. Answer the question.

A. My personal, professional opinion is reflected in my answers to physicians. I advise, almost without exception, that the use of thyroid in reduction of obesity or in any of its other therapeutic uses requires that the patient should be carefully observed by the physician, and that he require the patient to appear at his office frequently, not less than once a week. I also tell him that he should keep careful watch for symptoms of hyperthyroidism.

Q. In your advice to the profession in such regard do you encourage or discourage the use of your thyroid preparations in cases of obesity?

Mr. Gust: That question is objected to as being wholly incompetent, immaterial, and irrelevant, and calling for the conclusion of this witness, and if he has given



such advice the particular letters are the best evidence of the advice that he gives.

Mr. Michael: Mr. Examiner, I am asking for the general policy of this company. He says he determines the questions involved.

Examiner Norwood: I think, gentlemen, it is relevant to bringing out these facts showing just how these competitors sell their products and under what conditions and instructions and advice.

Objection overruled.

By Mr. Michael:

Q. Answer the question.

A. In reply to inquiries from physicians who directly ask advice on the reduction of obesity or the use of thyroid in reducing obesity, I do not attempt to either encourage or discourage the use, but follow the general policy of advising them of what I conceive is the attitude of the best-established thought in medicine.

In pursuance of that, of course, I give them such advice as I have already outlined, advise that thyroid is badly tolerated in some cases, is exceptionally well tolerated in others; that certain clinical conditions such as myxedema and cretinism in which there is a demonstrated absence of the patient's own thyroid secretions, that it can be given in large doses, and that in such cases it is less objectionable or there are no objections to it.

However, that in the treatment of a normal individual the use of thyroid to burn up fat is not generally regarded as the best method of removing this fat and that condition should more properly be treated differently; namely, that attention should more properly be directed to the restriction of the caloric intake.

Q. Have you finished?

A. I have.

Q. In giving these cautions to physicians, do you have in mind the possible dangers of administration of thyroid even under medical supervision?

Mr. Gust: That is objected to for the same reason I objected to the previous question.

Examiner Norwood: Objection overruled.

The Witness: I do have that in mind. I attempt wherever advice is asked for in the administration of thyroid or any other drug or therapeutic substance that we manufacture, to point out to the physician who is inquiring about it any possibilities of danger that might arise from taking it.

Mr. Michael: That is all.

Examiner Norwood: Cross-examine.

### Cross Examination

By Mr. Gust:

Q. Doctor, just one or two questions, if you please.

A. Yes.

Q. How long have you been in business?

A. You refer to the company?

Q. Yes.

A. I would say for a period of more than 30 years.

Q. How long has your company been selling thyroid substances?

A. Do you want just a general statement?

Q. Yes.

A. I would say a period of more than 20 years.

Q. In what size pills do you put up desiccated thyroid, generally, or more or less on the average?

A. The technical description of the product we manufacture is not pills, they are tablets.

Q. Tablets?

A. Yes. We manufacture a compressed, the compressed thyroid in tablets of one tenth, one fourth, one half, and one grain. There are other sizes, but that, I believe, will give you the range of the dosage.

Q. Do you make any with a higher content than one grain of desiccated thyroid?

A. I believe that we do. I will not answer, Counsellor, positively on that question, but I believe that we do.

Q. Do you make five-grain tablets?

A. I cannot answer you positively about the five-grain. I believe we make a two-grain.

Q. You are not certain whether you make a five-grain, or not?

A. I am not.

Q. Do you make, also, other endocrine substances?

A. Yes.

Q. Plural glandular substances?

A. We make these, several components of plural glandular compounds. The term used "plural glandular compounds" refers to a combination of things which we manufacture, individually; in other words, each one of which we manufacture.

Q. What I am trying to ask you is, do you put them out in combination?

A. Yes, we do.

Q. And you put up combinations of thyroid and ovarium substances?

A. Yes.

Q. And thyroid and pituitary extract?

A. Yes, thyroid and pituitary, with others.

Q. Thyroid and pituitary with others?

A. Thyroid and pituitary with others.

Q. You put that out to the medical profession?

A. They are advertised to the medical profession and sold to the drug trade.

Q. Do you advertise any of them direct to the public?

A. No, we do not.

Mr Gust: I think that is all.

By Examiner Norwood:

Q. Do you sell some of these tablets of the thyroid preparation in packages which the customer may buy from the retailer?

A. Yes. I do not believe there would be any restriction anywhere upon the layman asking for and receiving in the drug store thyroid tablets.

Q. If he knows what to ask for?

A. If he knows what to ask for.

Q. How are these packages labeled?

A. "Thyroid U. S. P."

Q. "Thyroid U. S. P.?"

A. Yes.

Q. They are put up in little bottles?

A. Yes.

Q. In the form of tablets?

A. Yes.

Q. Is there any recommendation on the bottle or anywhere for its use in reducing?

A. No. The label contains no statement as to the use of the substance.

Q. Any warning issued with the printing matter or otherwise?

A. No.

Examiner Norwood: That is all.

Mr. Michael: Nothing further.

Mr. Gust: I have nothing further for the witness.

Examiner Norwood: That will be all, Doctor.

(Witness excused.)

Mr. Michael: I will call as the next witness for the Commission Mr. Henry C. Young.

HENRY C. YOUNG was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Michael:

Q. What is your name?

A. Henry C. Young.

Q. What is your business, Mr. Young?

A. I am head of the sales department of L. K. Liggett & Company.

Q. Where is the headquarters of L. K. Liggett & Company; where are they located?

A. The headquarters of the company are at 2 Park Avenue, New York.

Q. New York City?

A. Yes.

Q. Is that the general office of the company?

A. Yes.

Q. In what business are they engaged?

A. Retail drug stores.

Q. How many retail drug stores does the Liggett Company operate?

A. 452.

Q. 452.

A. 452.

Q. Throughout the country?

A. Throughout the country from Bangor, Maine, to Denver, Colorado.



Q. You are in the general office?

A. Yes.

Q. How long have you been with the company?

A. Twenty years.

Q. What was your position immediately prior to your present position?

A. Manager of the medicine department.

Q. Manager of the medicine department?

A. Yes.

Q. Did that department include so-called patent medicines?

A. All patent medicines.

Q. Are the various retail stores of your organization supplied or by direction of the headquarters office?

A. Yes, with practically no exceptions.

Q. In other words, your headquarters office or those in charge, including yourself, have general knowledge of what products your stores are handling?

A. Yes.

Q. Do your stores handle various products recommended by makers thereof for reducing purposes, and so advertise?

A. The correct answer to that would be, as I understand it, we carry an assortment of merchandise which we give the customer, in order to give the customer what they ask for. We recommend nothing.

By Examiner Norwood:

Q. He asked you did you carry goods which the maker thereof advertised for the purpose of reducing?

A. Yes.

By Mr. Michael:

Q. I am asking you, Do you carry products sold by manufacturers and so advertised by the makers?

A. Yes.

Q. As I understand it, your company makes no recommendation at all on those things?

A. No.

Q. For any products' use, any of the properties of the so-called patent medicines?

A. No products at all.

Q. That is your general policy?

A. Yes.

Q. Is the product known as Vannay one of those medicines?

A. Yes.

Q. And recommended and advertised by the producer thereof for that purpose?

Mr. Gust: I object to that. Whatever therapeutic claims are best shown by their advertising and their package.

Examiner Norwood: Do you have one of those packages to put in evidence?

Mr. Michael: No, sir.

Examiner Norwood: Read the question.  
(Question read.)

Examiner Norwood: Objection overruled.

The Witness: The package or product "Vannay," is carried—may I answer that by saying—

By Examiner Norwood:

Q. Do you know what is recommended to you or to your stores as being useful for?

A. Yes.

Q. You do not know or do you know what the use of the products are when you buy them?

A. At the time, yes, we know what they claim they are used for.

Q. It may be recommended in different ways, but just generally what it is recommended for?

A. It is recommended for reducing, Vannay.

By Mr. Michael:

Q. What company makes Vannay?

A. The Bio-Chemical Company.

Q. Where is that located?

A. New York City.

Q. Is it in existence now?

A. Yes.

Q. And the product "Vannay" is now currently sold?

A. Yes.

Q. Does your company handle a product recommended and advertised by the maker thereof for the purpose of reducing known as Bon Kora?

A. Yes.

Q. Is that currently on sale and the company in existence?

A. Yes.

Q. What company makes it?

A. Battle Creek Products Company.

Q. Battle Creek, Mich.?

A. Yes.

Q. Does your company handle a product recommended and advertised for the purposes stated known as Cole's No. 19?

A. We do.

Q. What company makes that?

A. I am sorry. I do not remember.

Q. Do you know where they are located?

A. I had it in the paper and I evidently mislaid my paper.

Q. Is that product currently on sale?

A. It is.

Q. Is the maker or the company that makes it in existence?

A. They are.

Q. Do your stores handle a product and recommended by the company for reducing purposes known as Vegetoids?

A. We do.

Q. Who makes that?

A. Again I am sorry I do not have that information.

Q. Do you know where it is made?

A. Somewhere in the country, but I do not remember.

Q. Is it a current item?

A. Yes.

Q. Is the company that makes it in existence?

A. They are.

Q. Does your company handle a product recommended and advertised by the maker thereof for reducing purposes known as "Eliphat"?

A. Yes.

Q. What company makes that?

A. It is the Eliphat Laboratories.

Q. Where are they located?

A. I believe it is Detroit, but that is just a guess.

Q. Is it a current item?

A. Yes.

Q. Is the company in existence?

A. Yes.

Q. Does your company handle a product recommended and advertised by the maker thereof for reducing purposes known as "Retardo"?

A. Yes.

Q. Who makes that?

A. That is an outfit here in New York. Again, I do not know the name.

Q. It is a current item?

A. Yes.

Q. The company is in existence?

A. Yes.

Q. Does your company handle a product recommended and advertised by the maker or producer thereof and employed for reducing purposes known as Phytoroides?

A. Yes.

Q. Who makes that product?

A. Again, I cannot remember.

Q. Is it a current item?

A. Yes.

Q. Do you know if the company is in existence?

A. They are.

Q. Does your company handle the product recommended and advertised by the producer thereof for reducing purposes known as Dietene?

A. Dietene is a powder. It is not marked, and as far as I know it does not have any reducing statement; it is merely an assumption on our part because of the name "Dietene" on it, and something about low calories.

Q. It is put out in packages and sold to the general public?

A. Yes.

Q. Is it advertised to the general public?

A. I have not seen any advertising of it lately.

Q. You have not seen it advertised lately, but you have seen it advertised in the past?

A. In the past; yes.

Q. You do know of its being used for reducing purposes?



A. The answer there, we do not always know what things are used for?

Q. I did not understand what you said in your previous answer, then.

A. We assume that it is used for the purpose of reducing, and in our own minds we classify it as that type of a drug or preparation.

Q. The advertising that was done that you said you had previously seen, was that the substance of the advertising?

A. Yes.

Q. For use for reducing?

A. Yes.

Q. Is that what might be called a food product?

A. It is mixed with foods, yes. It would not come under the head of a food product.

Q. Is it a product said to be low in calories?

A. That we would not know.

Q. Is it so claimed by the company that makes it?

Mr. Gust: I object to that; the claims are best shown by their own literature.

Examiner Norwood: He can tell the general claims if he knows them. Objection overruled.

The Witness: Again that is an assumption. I believe it is. It has been some time ago since I have seen the package.

By Mr. Michael:

Q. What?

A. It has been some time ago since I have seen the package.

Q. Who makes that product?

A. I do not remember.

Q. Is it a current item?

A. Yes.

Q. Is the company in existence?

A. Yes.

Q. Mr. Young, does your company handle pharmaceutical thyroid preparations?

A. We do.

Q. Which ones do you handle?

A. We have them made by reputable manufacturers, as I understand it. Parke-Davis, Squibbs, United Drug Company, and most of the manufacturers of the thyroid types of pharmaceuticals.

Q. You handle practically all of them, or all of them?

A. All or most of them. We carry them in our prescription department.

Q. As I understand it, these pharmaceutical preparations that you have named are sold on prescription; is that correct?

A. The man in charge of that department is out of town. As far as I can find, only in the City of New York must you have a prescription to buy thyroid tablets.

Q. What is the last part of that answer?

A. Only in the City of New York must you have a prescription to obtain thyroid tablets.

Q. Do I understand your answer to imply that there is a regulation or ordinance in the City of New York forbidding the sale of thyroid except on prescription?

Mr. Gust: That is objected to as being wholly incompetent, immaterial, and irrelevant, and not the way to prove it in any event.

Examiner Norwood: Objection overruled.

By Mr. Michael:

Q. What is your answer?

A. There is a regulation in the City of New York

against the sale of thyroids without prescription; that, among many other items, recently put in force.

Q. Is the general method of sale of those pharmaceutical thyroid preparations throughout the territory where your stores are located for the sale of those products to be, usually, on prescription?

A. There is no regulation.

Q. They are kept in your prescription department, are they?

A. Yes.

Q. Outside of New York City, as I understand you to say, the products may be bought by members of the public if they call for them by name?

A. Yes.

Q. Do you handle a product recommended and advertised by the maker thereof for reducing purposes known as "Marmola"?

A. We do.

Q. Do you sell that in your New York stores?

A. Yes.

Q. Since the enactment of these ordinances that you speak of?

Mr. Gust: Objected to, if the Court please, as incompetent, immaterial, and irrelevant.

Examiner Norwood: Objection overruled.

The Witness: We do.

By Mr. Michael:

Q. Will you explain why this sale is permitted, if it is permitted, under the ordinance?

Mr. Gust: The same objection.

Examiner Norwood: Objection overruled.

The Witness: As far as we know, Marmola is a patented medicine, and the formula is not on it. I know of no objection to the sale of it.

By Mr. Michael:

Q. Do you know that each dose contains half a grain of thyroid?

A. I do not.

Q. Do you know that because of the formula contained in the package?

A. Not unless it is marked on the package and it is not marked.

Q. Do you know it is contained in the booklet enclosed in the package?

A. That I do not know.

Q. If that were a fact would you sell it in New York?

Mr. Gust: I object as wholly incompetent, immaterial, and irrelevant to what he would or would not do.

Examiner Norwood: I think that he can tell what he would do under the regulations that obtain here in the City of New York, and what he is now doing about it, and what his ideas are about the subject.

The Witness: The thyroid being carried in an entirely different department is perhaps the reason why the medicine department, so-called, was not interested under that law unless the package was actually known as thyroid.

Examiner Norwood: Just one moment.

By Examiner Norwood:

Q. It is a case of shut-eye sentry, is it?

A. Not necessarily.

Q. No?

A. I can continue that answer. Our legal department usually advises us what to do.

By Mr. Michael:

Q. Do you know whether or not your legal department has ever advised you, or that it ever has been advised that "Marmola" contains a half grain of thyroid to each dose.

and that that particular ingredient is named in the formula that is enclosed in the package?

A. I would not know what the legal department knows.

Q. Is the ordinance that you speak of broad enough to include formulae which contain thyroid?

Mr. Gust: That is objected to as calling for a conclusion of law.

Examiner Norwood: I think that that has gone far enough without introducing the ordinance. I do not think this witness should construe it. He can tell us what he does or requires his subordinates to do under city regulations in a general way, but I do not think that he can construe that ordinance.

I think that I will sustain that objection.

Mr. Michael: I will ask the Commission to take judicial notice of the ordinance.

By Mr. Michael:

Q. Did you ever see anything on the outside of the package of Marmola that sets forth that it contains thyroid?

A. Not that I recall.

Q. Do I get your position correctly that since there is no statement of thyroid contained on the package that you assume that it does not contain thyroid?

A. Correct.

Q. Do you, in your stores, handle any other so-called patent medicines or products that are recommended and used by, or, rather, recommended for use by the public, by the makers thereof for reduction purposes?

A. I do not understand your question.

Q. Do you in your stores handle any other so-called patent medicines or products that are recommended and advertised by the maker thereof for reduction purposes?



other than those that I have mentioned, and which have been referred to in your previous testimony?

A. No others that I can recall.

Mr. Michael: That is all.

By Examiner Norwood:

Q. About these advertised proprietaries and the prescription drugs.

A. Yes.

Q. Have you had experience in selling with the department that sells both of these?

A. Yes.

Q. The prescription drugs are plainly labeled so the contents may be readily recognized?

A. The prescription drugs carried in the prescription department which carries the regular pharmaceutical packages of such drugs.

Q. Prescription drugs are simply very plainly labeled and do not carry any regulations as to their use?

A. That is right. They are carried in our prescription department. They carry the regular pharmaceutical packages which state the contents.

Q. Can you tell me which are the best sellers? Which goes into the volume of sales, the advertised proprietaries or the prescription drugs?

A. By that you mean of our total business?

Q. Yes.

A. The medicine department, by a big margin. In other words, of our total business, prescription are only 5 percent or 6 percent of the total.

Q. Would you know from your experience in a given drug like thyroid whether the advertised product sells better than one sold over the prescription counter; that is, in a greater volume?

A. It certainly would.

Examiner Norwood: You may proceed. Cross-examine.

### Cross Examination

By Mr. Gust:

Q. Mr. Young, as to all these products Counsel asked if they were recommended and advertised by the makers thereof for reducing purposes.

A. Yes.

Q. Have you seen any advertisements of Bon Kora recently in the papers or other advertising?

A. There has not been advertising lately on many of these products.

Q. So when you answered all of these questions to all of these drugs, you mean at one time or another it was your understanding that they were advertised?

A. At the time that we added them to our line.

Q. Does that apply to Vegetoids?

A. Does that apply to Vegetoids standing alone?

Q. Yes.

A. Yes, to some extent.

Q. You do not mean to say that that is a drug that you have seen any advertising on at all?

A. Yes.

Q. Then, you do not mean to say that as to any of these, you have seen any advertising on at all?

A. I do not understand very well what you mean by that question.

Q. You had one product, Phytroids; that is an ethical product?

A. That is carried in the prescription department.

Q. That is never advertised to the general public?

A. No.

Mr. Gust: That is all.

Mr. Michael: That is all.

Examiner Norwood: You may be excused.

(Witness excused.)

Mr. Michael: Mr. Examiner, the witness has stated that he has lost his papers and that he may have left them on his desk. However, at the present time, I desire to call Mr. Albert Leventhal.

ALBERT LEVENTHAL was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Michael:

Q. What is your name?

A. Albert Leventhal.

Q. How do you spell your last name?

A. L-e-v-e-n-t-h-a-l.

Q. With whom are you connected?

A. Simon & Schuster.

Q. In what position?

A. I am sales manager of the publishing firm of Simon & Schuster, publishers.

Q. Where is that company located?

A. 336 Fifth Avenue, New York City.

Q. Does your company not only publish books but sell the same to the trade, generally?

A. They do throughout the country.

Q. What is your method of selling? In other words, to what class of dealer do you sell?

A. We sell through wholesalers to stores of all types,

department stores, book stores, stationery stores, also we do mailorder advertising, direct mail-order advertising, and coupon advertising in the papers,

Q. And sell directly to the purchasing public?

A. Yes.

Q. Is your business one that extends throughout the country?

A. Yes.

Q. Does your company publish and sell a book intended for and sold, among other purposes, for reducing purposes, known as "The Secret of Keeping Fit," by Artie McGovern?

Mr. Gust: I object to that question as the best evidence of what that book is can best be shown by the book itself.

Examiner Norwood: I think he can tell it in a general way. Objection overruled.

The Witness: Yes.

By Mr. Michael:

Q. How long has that book been on sale?

A. About 8 months.

Q. Who is Artie McGovern, the author?

A. He is a man who formerly was the manager and proprietor of a gymnasium in New York. He has also been adviser and conditioner to such well-known members of the public, including Babe Ruth, Jack Dempsey, Gene Sarazen, Johnny Farrel, Vincent Richards, Sidney Wood, Henry Morgenthau, John J. Raskob, and others. He is a physical director. May I quote from his book as to his full pedigree?

Q. You may refresh your recollection if you want to.

Mr. Gust: I object to his refreshing his recollection from anything that he did not write.

The Witness: I did write this.

Mr. Gust: Did you write this from material furnished by McGovern to you?

The Witness: Yes.

Examiner Norwood: Is your objection withdrawn?

Mr. Gust: I object because it is obviously hearsay.

Examiner Norwood: You may answer from your own knowledge, only.

The Witness: I did answer. I know him through his connection with the gymnasium that he is a physical conditioner. I know during the war he was at Plattsburg Barracks in charge of conditioning of army men.

Examiner Norwood: The objection is overruled.

By Mr. Michael:

Q. Are you familiar with the book?

A. Yes.

Q. Does that contain portions or chapters on a reducing diet and reducing exercise?

A. It does.

Q. Has that book been advertised, or is it being advertised now?

A. It has been, and it is continuing to be advertised.

Q. What advertising have you done, or are you doing in this book?

A. We have been doing full-page advertising in newspapers and magazines with national circulation, such as "Time" magazine, "Esquire," and we are doing a full-page advertisement in "Collier's," and we have had a full-page advertisement in the New York "Times" and other newspapers.

Q. Are all of these newspapers and magazines of general circulation—first, are all of these newspapers and magazines of general circulation throughout the country?

A. With the exception of several of the local newspapers in New York, they are.



Q. Has this advertising campaign been going on during all the time since the book has been published?

A. Beginning about 6 weeks after publication.

Q. Have the sales been extensive?

A. Yes, they have.

By Examiner Norwood:

Q. As I understand it you are recommending this in your advertising and otherwise for reducing weight?

A. In particular, but among other things. The book is called "The Secret of Keeping Fit," and we use in our advertising the headlines: "Do you want to reduce?" "Do you want to gain weight?" "Do you want to keep yourself healthy?"

By Mr. Michael:

Q. Among other things mentioned that this book is useful for in your advertising, you state the use of it for reducing purposes?

A. Yes.

Mr. Gust: That is objected to. The advertisement is the best evidence of what it contains.

Examiner Norwood: The objection is overruled. You may answer.

The Witness: Yes.

By Mr. Michael:

Q. In selling this book, is it your course of dealing to ship it from your headquarters or your publishing house here in New York City, N. Y., to other States of the United States where your customers are located?

A. Yes.

Mr. Michael: That is all.

Mr. Gust: No questions.

Examiner Norwood: You may be excused.

(Witness excused.)

Mr. Michael: Mr. Examiner, the attorneys for the Commission desire to close their case at this point of the proceedings provided, however, that it is agreed by and between Counsel for the Commission and Counsel for the Respondent and with the approval of the Trial Examiner, that the Commission may offer, through its attorneys, out of regular order, without objection on that ground, any advertising matter of the Respondent that has been used by Respondent within the time covered by the complaint, at a subsequent hearing; and also introduce a booklet in evidence that was at one time used by Respondent, or a copy of the same and which contains a quotation included in the complaint herein, and more fully in the answer herein, and which starts out, "We feel a responsibility to those who buy Marmola," and so forth and to also offer in evidence out of its regular order testimony as to the time of usage of said booklet or a portion of the allegations contained in the answer filed by the Respondent in the previous court proceeding in which statements were made under oath as to the time of usage of said booklet quoted from.

Mr. Gust: May I ask if you propose to make those offers during the next session, whenever that may be, and when they may be held, or will you hold them until some later time?

Mr. Michael: At the next session if the material is available.

Mr. Gust: I have no objection to you making such offers of proof at our next session on the ground that it is out of order, or that you are today closing, but I reserve the right to object to any evidence that is then offered on the ground that it is not material, relevant, or competent.

Mr. Michael: That is all right, except I would like to reserve the right, if certain material is not available at that time, to get it as soon as it is available.

Examiner Norwood: As soon as possible.

Mr. Gust: I do not want to go ahead with my proof and with the putting on of some of my testimony and then find out that you are going to have some additional evidence. As I understand it, that is the situation. As you know, I am about to ask for at least 3 weeks' time. That should give you ample time.

Mr. Michael: I think so, but I cannot state definitely.

Mr. Gust: To make any offers of proof at the next session.

Mr. Michael: Suppose Mr. Hay is unable to locate his booklet, and suppose he has not been able to find his material as to the time of this publication and use, particularly the use.

Mr. Gust: As to that matter I do not care when you offer it. I am directing myself to these advertisements.

Mr. Michael: They will be checked.

Mr. Gust: I do not care when you offer the other.

Examiner Norwood: It is understood with these reservations that the complainant rests, and now I would like to know the Respondent's pleasure as to introducing its evidence, and ask him to make arrangements to do so as soon as practicable.

Mr. Gust: If Your Honor please, I would not like to commence offering proof on the part of the Respondent for at least 3 weeks. I have already adjourned several matters in the District Court of the United States in Detroit, Mich., and in the Circuit Court for the County of Wayne in order to accommodate the Commission and not ask for any continuances of their testimony in connection.

with those matters, and I would like to dispose of those matters during the coming 3 weeks, and start then at the Examiner's convenience at any time after that.

Examiner Norwood: As it is the desire of Counsel for the Respondent that he have at least 3 weeks' time before putting in his evidence, and as he cannot determine at this time at which place he wishes the hearing convened, we shall now adjourn the hearing to reconvene at 5 days' notice, with the understanding that the case is to be taken up again in not less than, and I trust, not more than a month.

Mr. Michael: Mr. Gust, will you have at the next hearing the printed answer in the proceeding in the United States Circuit Court of Appeals, Sixth Circuit, entitled "Raladam Company, petitioner, v. Federal Trade Commission, Respondent, No. 5429," said petitioner filed "The Answer of the petitioner to paragraphs 'g,' and 'h' of Respondent's Answer in nature of cross-bill."

Mr. Gust: I will.

Examiner Norwood: Is there anything further by either of the parties.

Mr. Michael: Nothing further.

Mr. Gust: Nothing further.

Examiner Norwood: There being no further testimony to be offered, or anything else to come before the Examiner at this hearing, it is adjourned on 5 days' notice.

(Whereupon, at 12:30 o'clock p. m., February 7, 1936, the hearing in the above-entitled matter was adjourned.)

## PROCEEDINGS

(Continued March 10, 1936)

Examiner Norwood: The hearing will come to order.

Pursuant to adjournment at the last hearing, by agreement of counsel and notice of hearing issued on the 29th day of February, the hearing in this case is now convened for the taking of testimony for the respondent.

Mr. E. J. Hornibrook and Mr. H. D. Michael appear for the complainant, and Mr. Roekwell T. Gust appears for the respondent.

You have a number of witnesses here, Mr. Gust?

Mr. Gust: Yes.

Examiner Norwood: All the gentlemen who expect to be witnesses will please stand up and be sworn.

(Witnesses sworn.)

Mr. Gust: At this time, Mr. Examiner, I would like to renew the motion to dismiss, that I made at the beginning of the case, on the grounds stated, and I also would like to re-offer the documents which have been marked for identification as Respondent's Exhibits Nos. 1 to 10 inclusive, as Respondent's Exhibits Nos. 1 to 10, both inclusive, I enumerated them all before.

Examiner Norwood: That is with regard to the question of res judicata, is it?

Mr. Gust: That's right.

Examiner Norwood: Now, will counsel look over these and eliminate everything, for the purpose of expense, that you possibly can. My opinion is that most of this is part of the record to go to the Commission and they will take notice of it, but if you insist on putting it in, you shall put it in.



Mr. Gust: The question, I think, we can later take up with the Court of Appeals. I have no doubt but what they will not permit it to be printed, inasmuch as they are in printed form, but I want it as part of the evidence in this case and let the Court of Appeals determine what, if anything, has to be printed again.

Examiner Norwood: Will it be limited solely for that purpose and none other, so far as bearing on the question of res judicata and your motion in regard to the same? Can counsel agree to make that a physical exhibit?

Mr. Michael: Well, that is a matter for later agreement.

Examiner Norwood: Well, you might agree to it now. The court will permit it to be made a physical exhibit.

Mr. Michael: If an agreement is made to make all exhibits physical exhibits, as is usually done, I think that would be included. I think the proper time to do that is on petition for review, or however it may arise in the court.

Mr. Gust: I am willing to defer that until later, as to whether or not it should be considered a physical exhibit or should be printed.

Mr. Michael: I don't know that I would have any objection to it, but I would want to give it consideration.

Examiner Norwood: Well, what I mean, I will admit this entire bundle of records.

Mr. Michael: May I call the court's attention to this: The fact of whether or not exhibits are considered physical exhibits or printed, is entirely a matter for the order of the Circuit Court of Appeals and a preliminary agreement wouldn't have effect in that regard.

Examiner Norwood: If counsel on both sides agree to it—

Mr. Gust: I am willing to go on record that it should

be considered as a physical exhibit, subject to approval of the Court of Appeals.

Mr. Hornibrook: It strikes me this is simply encumbering the record. I cannot see but what the court will take judicial notice of all documents before it.

Examiner Norwood: Well, I feel quite sure that some of these are quite properly receivable on that motion.

Mr. Michael: May I be heard in regard to the request of counsel for the respondent?

Examiner Norwood: Certainly.

Mr. Michael: I haven't had an opportunity to examine these proffered exhibits; I don't know of what they consist; just a mere outline of a statement, and I would like to have an opportunity at this time to see them.

Examiner Norwood: Very well, you can look them over now.

Mr. Michael: Yes.

Examiner Norwood: Just look them over now. Off the the record, Mr. Reporter.

(Discussion outside the record.)

Mr. Michael: Mr. Examiner, I would like to be heard in regard to two points in regard to this question.

Examiner Norwood: Very well.

Mr. Michael: I have already stated my opinion that there may be some doubt that this is the proper way to raise the question of res judicata, by offering these as parts of the evidence; that I am somewhat of the opinion the same question, as a matter of law, can be raised by motion, in the proper way, by petition or the various papers necessary as exhibits to the petition. However, I concede the respondent's right to raise the question if it is done in the proper way. If this is the proper way, O. K.

Now, in raising the question, which is purely a legal one,

the question is to be determined by the decree and by the rulings and the opinion of the court. Now, included in this offer is a transcript of the record of the testimony in the previous case, which has nothing to do with determining this legal question of whether the issue in the previous case has been decided. Now, this transcript, it is true, includes pleadings before the Commission, including the complaint and the answer and the findings and the order of the Commission. Now, perhaps those pleadings are proper for consideration to determine whether or not this plea of res judicata is well taken, but the testimony of the witnesses which is included here, has no part in the record; it cannot be considered and would have no bearing on the question at all. It is merely encumbering the record with several hundred pages of material which is not pertinent to the question to be raised.

I would further call attention to the fact, Mr. Examiner, that this offer of the papers in the preceding case before the Commission and before the court, does not include a certified copy of the opinion of the Supreme Court of the United States which is part of the record and will determine upon what the decree was based, and I insist if this question is to be raised, that the record be complete, so that the question may be determined.

Mr. Gust: Mr. Examiner, I assume it was elementary that the court spoke through its decrees, not through its opinions, and the decree was a matter of record and the opinion was not. If there is any question about the opinion that is available in the books and reports. If counsel wants it, he may offer it. In so far as the testimony is concerned in the previous case, that shows what issues were litigated, irrespective of the pleadings. It shows what issues were actually tried and litigated, and I think it has a proper place in this proceeding.

Mr. Michael: In view of what the attorney stated, I have here a certified copy of the opinion of the Supreme Court of the United States, which I now offer as a part of this showing, in the event the Examiner admits the exhibits proffered.

Examiner Norwood: I think I am going to admit it all. Counsel can prove their point any way they please. Respondent's exhibits marked for identification Nos. 1 to 10, are received in evidence as Respondent's Exhibits Nos. 1 to 10, inclusive, and the paper just identified, consisting of the decision of the Supreme Court of the United States, in the matter of Federal Trade Commission, petitioner, versus Raladam Company, is received in evidence as Commission's Exhibit No. 14.

(The papers referred to were marked Respondent's Exhibits 1 to 10, and received in evidence.)

(The paper referred to was marked Commission's Exhibit 14, and received in evidence.)

Mr. Michael: Mr. Gust, may I interrupt you just a moment?

Mr. Gust: Yes.

Mr. Michael: There were certain agreements, certain additional exhibits to be offered in evidence by the Commission.

Mr. Gust: Would you just as soon defer that until later?

Mr. Michael: Yes. I just wanted an understanding about it.

Mr. Gust: Sure.

Mr. Michael: All right.

Examiner Norwood: Call your witness, Mr. Gust.

Mr. Gust: I will ask Dr. Redfield to take the stand.

DR. HAROLD H. REDFIELD was thereupon called as a witness for the respondent, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Gust:

Q. Will you give your full name, Doctor?

A. Dr. Harold H. Redfield.

Q. What is your business or profession?

A. Physician.

Q. Licensed to practice in Illinois?

A. Yes.

Q. How many years?

A. In 1907 I was licensed.

Q. Will you just give us briefly your education and other activities which have qualified you to practice medicine?

A. I graduated in 1907 from the Goodwin Medical College and was licensed to practice on examination. I graduated from the Medical Department of Loyola University in 1912. During 1908 and 1909 I was Associate Professor of Physiology at the Bennett Medical College, at that time the Medical Department of Loyola University. In 1910, 1911 and 1912 I was Junior Professor of Therapeutics at the same college.

Q. Then did you go into private practice?

A. I have been in private practice since 1907.

Q. Where is your office?

A. 552 Oakwood Boulevard.

Q. In the City of Chicago?

A. Yes, sir.

Q. Doctor, are you familiar with the biological product known as desiccated thyroid?



A. Yes, sir.

Q. Have you had occasion to use it in your own practice?

A. Yes.

Q. Have you, during your vocational training, and afterward, during your practice, had occasion to read medical literature regarding its effects?

A. During the last 10 years I first paid attention to it with reference to its application in every-day practical medicine.

Q. Have you had occasion to notice and observe the effects of desiccated thyroid when taken orally by human beings?

A. Yes, sir.

Q. Are you familiar with the dosage of desiccated thyroid as stated in the United States Pharmacopeia?

A. One grain.

Q. Does that contemplate one grain per day?

A. No, three or more grains as required.

Q. Are you familiar with whether or not it was formerly larger than that?

A. It was in some of the earlier editions, yes.

Q. What are the medicinal uses of desiccated thyroid?

A. It is used in cases of myxedema, obesity, cretinism, under-development of the bone structure in children, mental deficiency in children, and some skin diseases, acne, rheumatism, and I might enumerate a number of other conditions.

Q. Is it used in infantile paralysis?

A. It has been, yes.

Q. Is it used in urine-genital conditions?

A. In some cases, yes.

Q. And in organic kidney conditions?

A. Yes.

Q. Has it been used in prostate gland conditions?

A. Yes.

Q. Doctor, have you used desiccated thyroid in your own practice in the treatment of obesity?

A. Yes, I have.

Q. To what extent?

A. Well, I wouldn't want to say offhand, to make a definite statement, but in the last 10 years I have had 75 to a hundred cases of obesity.

Q. And you used desiccated thyroid in practically all of them?

A. Yes.

Q. What is the effect of desiccated thyroid when taken orally by a human being?

A. Increased rate of oxidation, increased metabolism of the body, it causes oxidation of fats.

Q. Are there other things also that increase metabolism?

A. Yes, fear, worry, taking exercise, and in women, menstruation increases it.

Q. Doctor, does the medical profession know the cause of obesity?

A. No, there are some theories, but nothing definite.

Q. Have they ever been able to determine what causes a man to lay down fat in his body?

A. Probably due, in my opinion, to deficient body excretion or deficient function of the endocrine chain.

Q. What is the endocrine chain?

A. Anterior and posterior pituitary, thyroid, ovaries, gonads; some include the liver, spleen and pancreas.

Q. Of those various endocrine glands, does the thyroid appear to have the greatest effect on metabolism?

A. Thyroid has been designated as the key-stone of the endocrine system, as the principal gland in the endocrine system, the gland that regulates metabolism.

Q. Do you classify obesity as exogenous or endogenous, in your opinion?

A. I think obesity, considered as a whole, is due primarily to some defect in the metabolic process of the body. I don't think a patient can eat enough food to make them fat, as long as they are normal.

Q. Do you have occasion to observe a great many people who are large eaters, and the endocrine chain is normal and they do not become obese?

A. Yes, sir.

Q. Have you had occasion to observe that patients that had some decreased metabolism, who did become fat?

A. Yes.

Q. What has been your experience, Doctor, as to whether or not most obese people are hypo-thyroids?

A. The majority I have seen are hypo-thyroids. There are some exceptions in the pituitary type of obesity, of course, but it is the exception rather than the rule.

Q. Now, in your opinion, Doctor, does the fact that obese patients may have a normal basal metabolic rate indicate and prove that obesity is due entirely to exogenous factors?

A. No.

Q. Why not?

A. You might have sufficient disturbance of thyroid functions that would materially affect the metabolism of the body as regards food, but yet would not be sufficient to make an appreciable showing.

Q. Doctor, has it been determined that a great many people react differently from the ingestion of food and do

not get the same increase in the metabolic rate that other patients get?

A. That is true.

Q. Is it true that quite often happens with obese people?

A. Yes, it does. They react to different foods.

Q. Has it also been determined that a great many people have so-called inactive periods of the basal metabolic rate?

A. Yes, you might take it today, you might take a reading today and take it a week from today and find an entirely different reading.

Q. Is it true, you may find it inactive at times during the day when you do not ordinarily take a basal?

A. Yes.

Q. I take it the ingestion of food normally increases the metabolic rate in particular protein, is that right?

A. Yes.

Q. Have you found that in that case the increase was not existent with a great many obese people?

A. It is not existent, no; there is a variation there.

Q. Doctor, how do you treat a patient?

A. Well, my treatment for obesity, the basic prescription is thyroid, desiccated thyroid.

Q. What dosage do you give?

A. I generally start with a grain four times a day.

Q. Do you give your patients a basal metabolic test?

A. Not all of them, because it is a question of finance. Some people cannot afford to go to a hospital and stay all night and pay \$6 or \$8 for a room and \$5 for the basal.

Q. Do you regard it as essential to give it before you prescribe thyroid?

A. No, not necessarily.

Q. What range of dosage of desiccated thyroid do you employ in the treatment of obesity?

A. As I say, I start with one grain four times a day and I increase it. I have given as high as 15 grains a day.

Q. Do you regard it as safe, beneficial and effective in the treatment of obesity?

A. Absolutely.

Q. In your opinion, Doctor, is thyroid medication indicated in practically all cases of obesity?

A. In my opinion it is, yes, either alone or in conjunction with other gland products. As I mentioned before, in cases of pituitary obesity or something else, but the ordinary type of obesity, thyroid is the treatment.

Q. I take it when you combine it with something else, you combine it with another glandular product?

A. Yes.

Q. Such as pituitary?

A. Or ovarian.

Q. Ovarian in special cases?

A. Yes.

Q. Do you prescribe it to obese people with normal basal metabolic rates?

A. Yes.

Q. Do you regard it as a safe, effective treatment?

A. I do, because people with a normal basal rate, in taking thyroid it will speed up the oxidation and help elimination of the body; it won't do any harm.

Q. Have you examined the formula for Marmola?

A. Yes, sir.

Q. Have you examined the booklet?

A. Yes.

Q. You have examined the booklet that comes in the Marmola package?



A. Yes.

Q. Are you familiar with the therapeutic properties of the various ingredients that appear in the formula?

A. Yes, sir.

Q. In your opinion, Doctor, can the average, usual or ordinary obese person take Marmola tablets for a period of 60 to 90 days, under the instructions, directions and advice contained on the package and in the booklet, without medical supervision and without harm?

A. I think they can.

Q. In your opinion, Doctor, would Marmola tablets, if taken as directed on the package and in the booklet, be effective to reduce weight in the average, usual, ordinary obese person?

A. They would, yes.

Q. Doctor, in your opinion, can these Marmola tablets be safely taken according to directions and instructions given, without any previous consultation with a medical practitioner or without medical supervision, by the average, usual, ordinary obese person?

A. I think so.

Q. In your opinion, is this Marmola formula a practical treatment for obesity, which can be safely taken without previous consultation with a doctor or medical supervision?

A. Yes.

Q. Doctor, in your opinion, would the taking of a half-grain of thyroid, four times daily, be toxic to the ordinary or average obese person who is otherwise healthy, except for obesity?

A. No, I don't think so.

Q. You do not believe thyroid is toxic?

A. I have never seen any indications of it.

Q. Doctor, is it your opinion that this Marmola formula constitutes a useful, effective and safe treatment for the usual, average, ordinary, case of obesity?

A. I think it does.

Q. Did you read the diet instructions given in the Marmola booklet?

A. Yes.

Examiner Norwood: Which booklet is that?

Mr. Gust: That accompanies the package.

Examiner Norwood: Is it in evidence as an exhibit?

Mr. Gust: Yes, it is, but I don't know the number, and I don't know that you have them here.

Examiner Norwood: The one issued at the present time?

Mr. Gust: The one issued at the present time, yes sir.

By Mr. Gust:

Q. Do you regard that diet instruction as a proper instruction to be given to any obese person seeking to reduce?

A. It is a good general instruction, yes, to an obese person.

Q. Doctor, in your opinion, do the Marmola tablets taken according to directions and instructions and the advice contained in those booklets and accompanying the package, constitute a scientific treatment for obesity?

A. I think they do.

Q. Do you regard it as scientific to give thyroid in the treatment of obesity?

A. Absolutely.

Q. Doctor, in all your experience, have you ever observed any harmful effects from the taking of two grains of desiccated thyroid orally by patients for a period of 60 to 90 days, by an obese person?

A. No, I never have.

Examiner Norwood: We will take a 5-minute recess, gentlemen.

(A short recess was thereupon taken.)

Examiner Norwood: All right, gentlemen, let's proceed.

By Mr. Gust:

Q. Doctor, in your opinion, would two grains of desiccated thyroid daily, be entirely safe and free from danger to practically all obese people?

A. I think it would, yes.

Q. Doctor, are some people sensitive to various drugs or foods which may be taken internally or even come in contact with externally?

A. Yes, they are; there are personal idiosyncrasies against drugs. We have that in the use of extracts, some toxic dermatitis in the use of lip sticks; we have patients sensitive to certain pollens in the spring.

Q. Are ordinary articles of food examples of things that some people may be sensitive to?

A. Yes, there are.

Q. And quinine and aspirin are examples of drugs?

A. Quinine and aspirin, yes, and syphilitic people become arsenic-fast; it has no effect on them.

Q. Have you ever found anybody sensitive to a small dosage, as small a dosage as two grains of thyroid daily?

A. No, I haven't, not a normal individual.

Q. Have you ever found any obese people who had any untoward or bad reaction from your own dosage from one grain four times a day?

A. I have given thyroid to some people and they developed symptoms.

Q. Were those obese people?

A. No, they were not.

By Examiner Norwood:

Q. What kind of symptoms did they develop?

A. They have palpitation of the heart and nervousness, tremors of the fingers and profuse perspiration and things of that kind.

By Mr. Gust:

Q. Are those symptoms symptoms of hyper-thyroidism?

A. They are part of the clinical picture of hyper-thyroidism.

Q. Are they transitory or do they disappear?

A. After medication is stopped, they disappear, generally, within 48 hours to a week at the outside.

Q. Are they disagreeable symptoms?

A. They are exceedingly so. The patient could not help but notice them.

Q. Has it been your experience that a patient who experiences any of these disagreeable symptoms stops the medication?

A. They generally, as a rule, stop right immediately, yes.

Q. Doctor, have you had occasion to treat hyper-thyroid patients during your practice?

A. Yes.

Q. What symptoms do these hyper-thyroid patients usually show?

A. They give a history of loss of weight; they are thin, have a ravenous appetite, with inability to gain weight and complain of perspiration, insomnia, palpitation of the heart. There may be headaches, nervousness, tremors and loss of strength; they don't seem to have pep, to use the common term.

Q. Did you ever have a patient come to you suffering

from hyper-thyroidism and who wanted to be treated for obesity?

A. I cannot conceive of such an anomaly as that. The two conditions are so different, they exclude each other.

Q. Have you ever had any people who were obese and came to you to be treated for obesity who had some bodily ill which would prohibit the use of as small a dose as two grains of desiccated thyroid a day?

A. No, I never have.

Q. Doctor, what do you observe to be the general effect on patients of thyroid medication in U. S. P. doses or less?

A. A general feeling of betterment of the condition. They report that they feel better, their appetite is better, their general strength is better. They can go and play eighteen holes of golf and not be shot to pieces. They sleep better and they don't complain of cardiac conditions.

Q. Have you ever observed the symptoms of hyper-thyroidism which have been caused by the ingestion of two grains of thyroid per day in an obese person?

A. No, I never have.

Q. What can a physician do when he does observe hyper-thyroidism from excessive doses of thyroid?

A. Stop the medication.

Q. Anything else that can be done?

A. That is about all you can do, and the symptoms will clear up themselves.

Q. Doctor, in your opinion, would it be possible for an obese person to cause himself any harm from the ingestion of thyroid, without first developing these disagreeable symptoms?

A. No, the symptoms would come first.

Q. Now, are these symptoms symptoms of any pathological changes in the human body?



A. Purely physiological.

Q. When the medication is stopped do the symptoms disappear without leaving any pathological changes in the body?

A. I have never been able to detect any permanent changes after the symptoms disappear, on subsequent examination.

Q. If the patient does take excessive doses of thyroid medication and has increased heart action or increased perspiration, is that any indication that there is any permanent damage to the heart or the sweat glands?

A. Merely an indication of a physiological process of the body, not pathological at all.

Q. Doctor, have you had occasion to examine patients who have exhibited these symptoms and examined them after the symptoms disappeared?

A. Whenever it occurs, I always make that a routine to examine them afterward.

Q. Have you ever found any permanent damage or harm in those individuals?

A. None whatever.

By Examiner Norwood:

Q. Doctor, I wish you would please tell us the difference between pathological and physiological conditions; I want that for the record.

A. A physiological condition is a condition that is associated with the functions, and a pathological condition indicates some change in the structure.

Examiner Norwood: All right.

By Mr. Gust:

Q. Doctor, have you examined these patients who have had these symptoms and they disappeared?

A. Yes, sir.

Q. Have you ever been able to find any pathological change in those patients?

A. None whatever.

Q. Or any permanent harm?

A. None.

Q. Doctor, it has been testified in this proceeding that people with a toxic goiter sometimes have cirrhosis of the liver and have hardening of the arteries, arteriosclerosis.

A. Yes.

Q. Is that any indication that people may get these diseases from thyroid medication, in your opinion, Doctor?

A. No, it is not.

Q. What is the difference between toxic goiter and excessive thyroid medication?

A. You don't get the same symptoms. You take certain eye symptoms that do not appear in thyroid toxicosis, excessive thyroid medication.

Q. Is it your opinion, Doctor, that in toxic goiter, Graves' Disease, the thyroid is producing a different substance than the normal thyroid produces?

A. I think it is.

Q. And is it your opinion that this different or changed substance causes the symptoms of Graves' Disease?

A. Yes, I think it does.

Q. Have you ever seen exophthalmos from thyroid medication?

A. No.

Q. Is that one of the outstanding symptoms of Graves' Disease?

A. That is one of the outstanding symptoms of Graves' Disease, yes.

Q. Now, Doctor, about this basal metabolic rate determination, have you found that necessary before prescribing

for obese people?

A. No, I have not.

Q. You have not?

A. No.

Q. Do you regard that as a very safe guide?

A. No, I do not, not a scientific absolute determination.

Q. That is subject to the possibility of error, is it?

A. Yes, it is, nervousness on the part of a patient, menstruation in women, conditions of that kind. I also consider the basal metabolic rate is taken after a period of non-observation, from 12 to 15 hours, what the result would be of a patient when taken during the day, I don't know what it would be in that case; that is not normal to me at all.

Q. Doctor, some reference has been made in this proceeding to the claim that thyroid medication does not act on the fat cells of the body?

A. Well, a fat cell to me is a misnomer.

Q. There isn't any such thing?

A. No, I don't consider it as an entity.

Q. Where is the fat deposited?

A. It is deposited around the cells of the body and in the omentum and places of that kind.

Q. In your opinion, Doctor, is thyroid medication effective to tend to reduce the fatty deposit, irrespective of where it may be deposited?

A. It is, yes.

Q. And is it your opinion, Doctor, that the most recently deposited fat is the fat which is lost first?

A. That is the fat that is first broken down, yes.

Q. And after that is gone, then the fat that is older —

A. — is broken down.

Q. Is broken down?

A. Yes.

Q. Is it your opinion, Doctor, that thyroid medication will cause an oxidation or burning of the muscles of the body?

A. No, I don't think it would.

Q. Why not?

A. I think the condition of the patient, by the time the fats are all metabolized, the danger of muscle oxidation would be such that thyroid medication would be stopped.

Q. In other words, you don't think it would effect the muscle tissue until there was no fat on the body?

A. No, the fat would be eliminated first entirely.

Q. Before any muscle tissue was attacked the patient would be exceedingly thin?

A. Exceedingly emaciated, yes.

Q. Doctor, some reference has been made in these proceedings that thyroid medication would decrease the ability of the liver to store glycogen. Have you an opinion about that, Doctor?

A. I think probably the reverse would be true; I think it would stimulate the liver to store glycogen.

Q. In other words, is it your opinion that thyroid is a stimulation to the normal processes?

A. Absolutely, yes.

Q. And it would stimulate the liver as well as the other organs?

A. Yes.

Q. And the function of the liver is to store glycogen, among other things?

A. One of the principal functions, yes.

Q. And thyroid medication would tend to stimulate that function?

A. Yes.

Q. How about the kidneys, what effect does thyroid medication have on the kidneys?

A. It might have a diuretic effect; it might increase elimination of water.

Q. That, in your opinion, Doctor, is because it is a general stimulant?

A. Yes.

Q. Doctor, in your opinion, would the Marmola formula, given as directed in the literature, be toxic to an obese person seeking to reduce?

A. No, it would not.

Q. Doctor, does the medical profession know the cause of hyper-thyroidism?

A. No, it has never been definitely determined what causes hyper-thyroidism.

Q. Has it been stated generally in the literature that it is the presence of something in the body which causes the thyroid gland to dysfunction?

A. It probably is, yes, probably due to some substances in the body.

Q. Has anybody ever been able to determine what that was?

A. Not to my knowledge.

Q. Or how it came about?

A. No.

Q. Is it also generally believed that this same substance that causes the thyroid to dysfunction also has some effect on the liver and the walls of the arteries?

A. It may, yes.

Q. That is a subject nobody knows?

A. Nobody knows, no.

Q. Doctor, have you observed among your patients,



people who are not excessive eaters and appear to have normal metabolic processes and still take on weight?

A. Well, in some instances they do.

Q. In some instances?

A. Yes.

Q. But in the great majority of cases it is your opinion they have deficient thyroid?

A. They do if they take on weight, yes.

Q. Has it been attempted to explain this by any theories of the profession?

A. I don't know; there have been several theories in regard to it. I don't know that they explained it at all.

Q. Have you any of them in mind?

A. No, I cannot recall any at the time.

Q. Now, Doctor, did you notice in this Marmola formula, it showed one-quarter grain of cascara sagrada?

A. Yes, sir.

Q. Are you familiar with that drug?

A. Yes, it is a mild laxative.

Q. Do you know the dosage given in the U. S. P.?

A. Five to fifteen grains.

Q. In your opinion, would the giving of one-quarter grain of cascara sagrada, for a period of 60 to 90 days, four times a day, be apt to cause a laxative habit?

A. No, it would not.

Q. Is cascara sagrada used by the medical profession to treat constipation?

A. Quite extensively, especially in children.

Q. Is it a mild laxative?

A. Yes.

Q. Is it supposed to act by stimulating the walls of the intestines?

A. It may have action, in increasing the peristaltic action of the intestines.

By Examiner Norwood:

Q. What other action does it have?

A. Well, that is probably about the principal action, to increase movement of the bowel. It would not extract any water of the tissues and soften up the feces.

By Mr. Gust:

Q. Now, Doctor, in your opinion, is the use of a slight laxative, a small amount of laxative, indicated along with thyroid medication?

A. I would consider it essential, yes, as a treatment. If you are going to increase the process of metabolism, you will increase the waste products, and elimination would be necessary to relieve clogging of the intestines.

Q. Doctor, do you regard thyroid medication as indicated in practically all obese people?

A. In practically all, yes.

Q. Now, Doctor, are you familiar with the drug, in the Marmola formula, known as phytolacca?

A. Phytolacca decandra, yes. That remedy has been used a great deal by the eclectic and homeopathic schools for the treatment of rheumatism and diseases of that kind.

Q. What, in general, is its action?

A. I am not familiar enough with the therapeutic action of the drug to answer that.

Q. Are you familiar with the dosage as given in the National Formulary?

A. In the British Pharmacopeia it is one grain.

Q. How about bladderwrack, are you familiar with that?

A. Fucus vesiculosus, that is a form of kelp that grows on the sea coast in Holland, Ireland, and places of that

kind. That is also used by the homeopathic and eclectic schools extensively, for obesity treatment, on the ground that it has a stimulating effect on the thyroid.

Q. Is that also in the British Pharmacopœia?

A. Yes.

Q. Is it there stated to be a treatment for obesity?

A. Yes.

Q. In your opinion, Doctor, does thyroid medication stimulate the person's own thyroid?

A. Yes, that has a lot of the endocrine, the extract of a gland given will stimulate the gland to normal activity.

Q. Have you observed that to be true in your practice?

A. Yes, I have.

Q. Have you observed patients who were reduced, under your medication with thyroid, who thereafter maintained, to some extent, a normal weight?

A. Yes.

Q. They do not all go back and get fat again?

A. No, they do not.

Q. Doctor, do you think that pregnancy is a contraindication of thyroid medication?

A. No, I do not.

Q. Is it usual and quite common to give a pregnant woman thyroid?

A. I don't know if it is common, but I don't think there is any danger attached to it.

Q. Would you stop thyroid medication on an obese person just because she happened to get pregnant?

A. No, I would not. I don't think it would be dangerous.

Mr. Gust: I think that is all. You may cross-examine.  
Examiner Norwood: Cross-examine.

## Cross-Examination

By Mr. Hornbrook:

Q. You are an allopathic physician, I take it?

A. Yes.

Q. The drug known as bladderwrack is not now listed in the American Pharmacopeia?

A. No.

Q. Isn't that an obsolete drug so far as American physicians are concerned?

A. Of course, the majority of American physicians are from the allopathic school, but they still use it in the homeopathic and eclectic school. Of course, they represent the minority.

Q. Represent the minority of the homeopaths?

A. Of the practicing physicians.

Q. Yes. Now, Doctor, you spoke about the taking of the basal metabolic rate?

A. Yes.

Q. In cases of obesity?

A. Yes.

Q. You caused that to be taken in cases of obesity wherever the patient can afford to do so.

A. Yes.

Q. Your idea is, it is of some help?

A. It is, yes, not positive.

Q. You do not treat cases of obesity with thyroid, without first giving them an examination.

A. I always give them a physical examination.

Q. You make that as thorough as you possibly can, don't you, Doctor?

A. Yes.

Q. If they can afford it you take the basal metabolic rate?

A. If they can afford it, yes, if they want it.

Q. If they say that they cannot afford it or do not want it, what else do you do to determine whether or not they are fit subjects for the taking of thyroid?

A. The general appearance of the patient and their history, sudden gaining of weight and the general physical condition of the patient.

Q. Do you make any examination of the urine?

A. Yes.

Q. Do you take their pulse?

A. Yes, blood pressure, respiration, heart action, go over the lungs, a general physical examination.

Q. How many patients — you said, I believe, that you had seen 75 patients, and I take it you meant you treated that many.

A. Yes, in the last 10 years.

Q. In the last 10 years?

A. Yes.

Q. Do you specialize in the treatment of obesity?

A. No; general practice.

Q. Isn't it a fact that women who are not obese desire to reduce?

A. Well, I presume so, yes, generally when a woman wants to reduce it is because she is overweight.

Q. Wasn't there a vogue a few years back, and isn't there such a vogue now among women whereby they desire to obtain a very slender figure?

A. Yes, there is.

Q. Would you say that people who are normal people so far as their physical characteristics are concerned, that it is proper for those people to reduce by the use of thyroid?



A. It wouldn't do them any harm, I don't think.

Q. Say, take, for example, a woman whose normal weight was 130 pounds, would you say if she took off 25 pounds that it wouldn't do her any harm?

A. I don't think it would, no, organically.

Q. There are, aren't there, people who are obese and yet have hyper-thyroidism?

A. No.

Q. Do you mean to say that you have never encountered them?

A. I don't think anybody else has, because hyperthyroidism spells emaciation.

Q. You would differ in that from other doctors, do you not?

A. Yes.

Q. Other doctors do maintain, do they not —

A. I think the majority of the profession, though, are on my side of the fence.

Q. Now, there are people who are hyper-sensitive to the use of thyroid?

A. Yes.

Q. And in those cases, the use of thyroid is not proper, is it?

A. It would not be, but those cases would not be obese.

Q. Assume they came and wanted some flesh taken off.

A. If they had a sensitivity to thyroid; they would probably have a mass hyper-thyroidism.

Q. And in those cases you would not give thyroid?

A. No, I would not.

Q. You never give thyroid without a careful examination?

A. I always make a careful examination.

Q. Do you require a patient to come and see you?

A. During the course of treatment, yes.

Q. How long is your course of treatment, usually?

A. It all depends on the results.

Q. You are watching it all the time, so you know when to stop?

A. Yes, when they come back I check up on them.

Q. If you notice any bad physical condition, while they are taking thyroid, you will immediately stop it?

A. Yes.

Q. Would you give a patient, without having made any examination, or without having seen the patient, two grains of thyroid a day, for a period of 60 to 90 days?

A. I wouldn't consider that was dangerous to the patient, if I did.

Q. Would you do it?

A. I might, under certain conditions.

Q. But you do not do it?

A. Well, as a rule my patients come to the office, but I would have no hesitancy in advising a patient who was obese, to take it.

Q. Isn't it a fact that thyroid is mentioned in the United States Pharmacopeia as a dangerous drug?

A. Well, it may be, yes, it may be mentioned as that.

Q. Isn't it a fact, Doctor, that there are many cases of obesity that are due just to overeating?

A. I can't conceive of a patient having a normal body chemistry, with a normal digestive function taking place that could overeat themselves into obesity.

Q. Then, what causes obesity?

A. Some element there that perhaps has not been determined.

Q. Have you tried to treat cases of obesity with diet alone?

A. Yes.

Q. And with success?

A. Temporarily so.

Q. And in those cases that obesity must have been due to overeating alone?

A. As soon as they go back to the regular diet, they become fat again.

Q. Isn't that true of thyroid?

A. As a rule that does not happen, no.

Q. You have seen it, though?

A. In some very rare instances.

Q. You have seen some cases?

A. Yes, I have seen some cases.

Q. Do you give diet along with thyroid?

A. I generally do, yes.

Q. Do you examine the patient's heart during this first examination?

A. Yes.

Q. And from time to time, do you examine it?

A. Yes.

Q. What is the purpose of that?

A. I want to see what progress I am making, to see if there have been any changes at all.

Q. You want to see what effect the thyroid is having upon the patient?

A. Yes. That is a routine procedure in nearly all kinds of medication; it is not exclusively confined to thyroid people.

Q. But if you find a patient who is afflicted with hyperthyroidism, you would not prescribe desiccated thyroid?

A. No.

Q. If you find a patient whose heart was afflicted with myocarditis, would you prescribe it?

A. I don't consider that a contraindication of thyroid.

Q. In other words, you mean to say the administration of thyroid would be proper or improper?

A. It wouldn't do any harm.

Q. Would you prescribe it in a case of that kind?

A. I would, yes.

Q. If the heart muscles were sick and impaired, would you prescribe it?

A. Well, that would not be myocarditis.

Q. You still would prescribe it?

A. I might, yes. I don't see why I shouldn't.

Q. Isn't your opinion at variance with the consensus of opinion?

A. The question is whether that condition was due to the thyroid or whether it was before the thyroid condition; in other words, which came first, the hen or the egg, in those cases. In those cases I failed yet to find any record of hyperthyroid or Plummer's Disease that have been examined a year or two before the onset of the goiter, with a hyperthyroid condition. Those conditions might have arisen independent of thyroid. They might be secondary.

Q. Is it possible for a person to take thyroid and have ill effects and those ill effects not develop until some time after the dosage?

A. You mean continuously?

Q. Yes.

A. They probably would take it over a period of time before symptoms of excessive thyroid medication would appear.

Q. If you find a patient afflicted with diabetes, would you prescribe it?

A. It has been used in some cases of diabetes.

Q. It has been?

A. Yes.

Q. But you do not —

A. I do not treat diabetes.

Q. You would not use it for diabetes?

A. I think most diabetic cases are dietary. Insulin is used in diabetes.

Q. If you found a person suffering from extremely high blood pressure, would you give them thyroid?

A. I don't think I would, no.

Q. Or hardening of the arteries?

A. No.

Mr. Gust: You mean obese people.

Mr. Hornibrook: Well, let's let him testify, please Mr. Gust.

Mr. Gust: Well, I object to the question as not being clear.

Examiner Norwood: Objection overruled.

By Mr. Hornibrook:

Q. If a person was afflicted with Bright's Disease, would you prescribe thyroid?

A. I am answering the question on the assumption that you are not referring to obesity.

Q. Well, I am asking you, then, if an obese person came to you and you found that he was afflicted with Bright's Disease —

A. I would have no hesitancy in giving thyroid in those cases.

Q. When I speak of Bright's Disease, is that known as Graves' Disease?

A. No, that is nephritis; Bright's Disease is the kidney and Graves' Disease is an exophthalmic goiter.

Q. How about intestinal nephritis, would you give it in that case?



A. Intestinal nephritis?

Q. Yes.

A. You mean interstitial nephritis?

Q. Yes.

A. Yes, I would in that condition.

Q. Aren't you at variance with the general opinion of your profession on that?

A. Well, I don't know as to that.

Q. Have you ever looked into the question, studied it deeply?

A. I haven't made a special study of nephritis, but I have made a special study of endocrines. I cannot see any contraindication.

Q. Doctor, in some cases such as myxedema and cretinism the taking of thyroid would be injurious?

A. No, it would not.

Q. Why; why is that?

A. Because you have an under-functioning of the thyroid.

Q. Isn't it true in all cases of under-functioning of thyroid, of the thyroid gland, there wouldn't be any great harm in taking a moderate amount of desiccated thyroid?

A. Under-functioning?

Q. Yes.

A. In hypo-thyroidism?

Q. Yes.

A. No, there wouldn't be any harm.

Q. But in hyper-thyroidism or over-functioning there is always danger?

A. It would be contraindicated in hyper-thyroidism.

Q. Those types of obesity, such as myxedema and cretinism are rare?

A. Cretinism is rare in this country; they have it in

some parts of Europe. Myxedema is more common in women after the menopause.

Q. Isn't it the consensus of your profession that in a perfectly normal person who desires to reduce, the proper thing for them to do is to take a diet prescribed by a physician, or some mild exercise?

A. Well, mild exercise produces exactly the same result in a physical way that thyroid produces in a physical way, it brings up the metabolism and oxidation.

Q. What does diet do?

A. Diet acts in another way. If a person has fat in the body and diets, and is below the basal metabolic rate, diet has to make up the deficiency.

Q. So that the same thing can be accomplished with diet and exercise as with thyroid?

A. Indirectly, yes.

Q. And without danger?

A. Well, I cannot see any more danger in taking thyroid than putting the patient on practically a starvation diet or severe exercise. Exercise will overtax the heart and nerves more than taking thyroid.

Q. Well, we are assuming the patient is following the directions of a physician and is not taking too much exercise. I want to know whether that cannot be accomplished, the reduction can be accomplished under the direction of a physician with diet and exercise, as well as with the use of thyroid.

A. Yes, but I think it is more dangerous.

Q. You think there is more danger about that?

A. Yes.

Q. Did you ever hear of any serious results when a person is put under diet and exercise under the direction of a competent physician?

A. I don't know that I have.

Q. You have heard of bad results, haven't you, with a person taking over-doses of thyroid?

A. No.

Q. You never heard of it?

A. Never heard of it.

Q. Have you read the literature with reference to the therapeutic effect or perhaps the physiological effect of thyroid?

A. Yes.

Q. Have you read the latest?

A. Why, I saw a recent article published by Blake & Company, all the late works.

Q. Isn't it a fact, Doctor, that in many cases of obese persons, that they have heart trouble?

A. Well, yes, probably do.

Q. And sometimes kidney trouble?

A. Yes.

Q. And hardening of the arteries?

A. I never saw arteriosclerosis in a fat person.

Q. Doesn't high blood pressure prevail among fat people as well?

A. Sometimes. As a rule, though, it is just the opposite.

Q. Do you use Marmola in the treatment of obesity?

A. No, I never have.

Q. Then you don't know anything about its action, do you?

A. Only from the formula.

Q. Only from the formula?

A. Yes.

Mr. Hornibrook: That's all.

Mr. Gust: That's all.

Examiner Norwood: You are excused.

(The witness was excused.)

Examiner Norwood: Call your next witness.

Mr. Gust: I will call Dr. Isaacs.

DR. LEWIS J. ISAACS, was thereupon called as a witness for the respondent, and having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Gust:

Q. Doctor, what is your full name?

A. Lewis J. Isaacs.

Q. What is your business or profession, Doctor?

A. I am a physician.

Q. Are you licensed to practice in Illinois?

A. I am.

Q. When?

A. From 1894.

Q. Can you tell us in general your education and experience?

A. I was graduated from the University of Illinois in 1894. Right after graduation, I spent one year in the Cook County Hospital. I spent two years as assistant to the late Dr. John B. Murphy, in the meantime teaching anatomy at that institution. I then practiced medicine on the side. I practiced general medicine until 1901, when I went to Canada and took the examination for a fellowship in Trinity Medical College, and after being there a year and a half I went to England and did post-graduate work in London. I returned from there and have been in active practice ever since.

Q. In the City of Chicago?

A. Yes.

Mr. Hornibrook: Do you have his address?

Mr. Gust: Yes.

By Mr. Gust:

Q. What is your office address?

A. 2729 West 38th Street.

Q. Doctor, are you engaged in the general practice of medicine?

A. The general practice of medicine.

Q. Are you familiar with the biological product desiccated thyroid?

A. Yes, sir.

Q. Have you had occasion to use it in your practice?

A. Frequently.

Q. Have you had occasion to observe its effect on a patient for whom you prescribed it?

A. I have.

Q. Have you had occasion during your educational training and afterwards, to read medical literature and books regarding its effects?

A. I have.

Q. Do you treat obesity?

A. I do.

Q. What do you prescribe for obesity?

A. Usually, thyroid extract. When I say "usually", it is the only drug I prescribe.

Q. What do you prescribe, what dosage?

A. I start my patient on one grain at a dose and use it two or three times a day to see whether my patient is sensitive to the drug.

Q. Does thyroid have other medicinal uses besides obesity?



A. Oh, yes, I use it frequently in treating myxedema and cretinism; principally in cretinism and myxedema.

Q. Do you know if it is used for other purposes?

A. I have read that it is used for other purposes. I don't use it for other purposes.

Q. Have you read of it being used in various skin conditions?

A. Oh, yes, I read that it is valuable in psoriasis. I haven't had any experience in it, in psoriasis, at all. I might modify my statement and say that I used it in skin diseases of adolescents and found it very, very beneficial.

Q. What is the effect of desiccated thyroid when taken orally by an obese person?

A. It seems to stimulate the thyroid and oxidize the accumulated material that is formed in the body. It stimulates oxidation. It makes the patient feel better, and therefore, we presume it stimulates it.

Mr. Hornibrook: Might I inquire there, whether he is referring to the stimulation of the thyroid gland.

The Witness: It stimulates the thyroid gland, yes sir.

By Mr. Gust:

Q. It stimulates other glands.

A. Stimulates every cell in the body.

Q. Does it stimulate the normal processes going on in the body all the time?

A. Yes.

Q. Do you have a basal metabolic machine?

A. No, sir.

Q. Do you give your patients the basal metabolic test before you prescribe thyroid?

A. Not always.

Q. Is it your usual practice?

A. No.

Q. Now, is a person's metabolism stimulated by other things besides thyroid medication such as exercise?

A. It is stimulated by so many things that it makes me stop from giving or ordering, rather, the metabolic test. Unless the patient is completely at rest, it is variable, and a little worry will raise the reading. If you put a patient in bed the night before and take a metabolism test in the morning, it shows, if you take it an hour later, entirely different.

Q. The mental condition of the patient?

A. The mental and physical condition both change it.

Q. Doctor, does ingestion of food raise the metabolic rate?

A. Sometimes it has been found peculiarly the metabolic rate has not been raised, particularly by the ingestion of food. That was demonstrated a short while ago when the clinician was taking the metabolic test every hour, and there was practically no increase in the metabolic reading when food was taken.

Q. Is that supposed to be one of the reasons why those people got fat, because they didn't have the normal metabolic response?

A. Well, that may be supposed to be one of the reasons. That is not my reason.

Q. I see. Now, Doctor, does the medical profession know the cause of obesity?

A. Absolutely not.

Q. Do they know the method by which the body lays down fat?

A. We know that fat is laid down in the body, but how and why it is laid down in the body is absolutely unknown, and my theory, of course, is as good as the other fellow's theory, and I can theorize.

Q. Do you regard thyroid medication as indicated in practically all obese people?

A. I believe it is always indicated in obese cases.

Q. Doctor, do you believe that practically all obese people have an under-functioning of the thyroid gland?

A. I think so.

Q. They are hypo-thyroids?

A. I think so.

Q. Has that been your observation of that?

A. Well, in most cases where I have taken the metabolic rate, they have all been hypo-thyroid. In most cases I do not take the metabolic reading.

Q. Doctor, have you ever observed any untoward results from your dosage of thyroid in obese people?

A. Never, except the fact of a sensitization, any more than they would be sensitized to the use of any such drugs.

Q. Have you found that very unusual for a person to be sensitive?

A. Very unusual. I think, in the number of cases I have taken care of, I rarely see a reaction at all.

Q. Is it usual for a human being to be sensitive to a product which he normally produces in his body all the time?

A. It is claimed by authorities that does not exist, but we have found people sensitive to other proteins that are normally in the body. Therefore, it is possible the thyroid may be, if a normal protein, there may be a protein reaction.

Q. But you found it to be very unusual?

A. Found it to be very unusual.

Q. Is it your opinion, then, Doctor, that thyroid medication is the indicated treatment for obesity?

A. I do believe it.

Q. How large doses have you given in obesity?

A. I grade them up until the usual loss of from 3 to 4 pounds a week and no more, and it sometimes takes, as much as 5 grains three times a day to bring it up to that point, and then I keep them on that dose.

Q. Now, do you regard thyroid as a safe, useful and effective treatment in practically all obese cases?

A. I think it is safe, yes.

Q. Have you examined the formula for Marmola?

A. I have.

Q. Have you examined the booklet that accompanies the package?

A. I have.

Q. Are you familiar with the therapeutic effects of the ingredients contained therein?

A. Yes, sir.

Q. Doctor, in your opinion, can the average, usual or ordinary obese person take Marmola tablets for a period of 60 to 90 days, under the instruction, directions and advice contained on the package and in the booklet, without medical supervision and without harm?

A. I think so.

Q. Doctor, do you think the Marmola tablets, if taken as directed on the package and in the booklet, would be effective to reduce weight in the average, usual, ordinary obese person?

A. Yes, sir.

Q. Doctor, in your opinion, is it necessary that a person go to a doctor before taking Marmola, or to take it only under medical supervision, that is, an obese person?

A. I don't get you.

Q. Well, strike it. In your opinion, can the Marmola tablets be taken safely according to the directions and in-

structions given on the package and in the booklet, without previously going to a doctor or having a doctor supervise the taking by the average ordinary obese person?

A. Yes, sir.

Q. Do you regard this formula as a practical, safe treatment for obesity?

A. Yes.

Q. Do you think, Doctor, that the taking of a half grain of thyroid four times a day, for a period of 60 or 90 days, would be toxic to the average obese person otherwise healthy, except for his obesity?

A. I don't believe thyroid would be toxic.

Q. You don't believe it would be toxic?

A. No, sir.

Q. Did you read the diet instructions given in the Marmola booklet?

A. Yes, sir.

Q. Do you regard them as good instructions to be given to the average obese person?

A. I think it is beneficial, yes.

Q. In your opinion, Doctor, is the treatment of obesity by thyroid medication or Marmola, a scientific way to treat it?

A. Yes.

Q. Doctor, what are the symptoms of hyper-thyroidism?

A. The symptoms, the objective symptoms or the symptoms complained of, sighted by the physician, are the existence of tremors, rapid heart action, rapid loss of weight, increased appetite and a general feeling of weakness. Those are the symptoms that they complain of. The symptoms observed by the doctor, tremor, rapid heart action and sometimes an exophthalmos and sometimes appreci-



able goiter, and sometimes we get the lumbric sign, which is loss of equilibrium.

Examiner Norwood: Off the record, Mr. Reporter.

(Discussion outside the record.)

By Mr. Gust:

Q. One of the outstanding symptoms is the weight loss, isn't it?

A. That is one of the symptoms that brings them to a physician first, rapid loss of weight and increased appetite.

Q. Are those people obese?

A. I have never seen one.

Q. Doctor, have you ever had any patient come to you to be treated for obesity who had some bodily ill which would prohibit the use of thyroid in U. S. P. doses or less than U. S. P. doses?

A. In view of the fact that I don't believe thyroid is toxic, I cannot think why thyroid will be contraindicated in any existing condition.

Q. If the patient is obese?

A. Yes, the patient being obese.

Q. Doctor, what have you observed to be the general effect of thyroid medication on a patient's general condition?

A. The patients say that they feel much better, and after the weight loss is established they have more energy, or rather, more useful energy, I better put it, because they do not have any symptoms of exhaustion from this exercise or energy. It takes some time before the symptoms or the weight reduction takes place.

Q. About how long does it generally take?

A. It has been my experience that it takes from 10 days to 2 weeks before they see any appreciable loss of weight at all.

Q. After that time?

A. Then there is a steady loss of weight, and I don't know whether that loss of weight could be increased by increasing the dose of thyroid. I get it to the dose that I wish to reduce the patient to and stop there. It may be that it would reduce it a great deal more if I continued it, but I don't. I do keep them on that treatment until the weight I desire has been established.

Q. Now, do the patients sometimes tell you they have more energy, pep and vitality?

A. Yes, they always tell you that as soon as they start to lose weight.

Q. Doctor, do you think or have you observed that thyroid had a diuretic action?

A. I haven't observed particularly that it is a diuretic action, but I presume it is, because it stimulates their organs in the body, and it must stimulate the kidney cells and every other organ.

By Examiner Norwood:

Q. Does it stimulate elimination?

A. Yes, sir.

By Mr. Gust:

Q. Doctor, have you had occasion to observe any persons who had over-doses and excessive doses of desiccated thyroid?

A. I don't know what an over-dose would be.

Q. Well, have you ever seen anybody who complained of nervousness and heartaction?

A. Yes, I had patients complain, after two or three days' treatment, that they seemed to be nervous and cannot sleep, and they are jerky, they explained it, and I would usually tell them to go home and forget it, and in two days'

time to come back, and if it still persists, I reduce the dose, but as a rule, we do not have to reduce the dose.

Q. Do you observe the symptoms to be transitory?

A. Transitory, and I believe the thyroid gland accommodates itself to the increased stimulation.

Q. Have you ever observed anybody who suffered any permanent harm from any of those treatments?

A. I never have seen one.

Q. Do you regard them as physiological?

A. Yes, physiological stimulation.

Q. Do you regard them as pathologic conditions, did you ever find any change in that pathology?

A. No, there is no change in the pathology; that is, that we can demonstrate.

Q. Is it a fact that a patient may have an increased heart action, that that is any indication that his heart is permanently injured or damaged?

A. No.

Q. Doctor, have you had occasion to treat people with toxic goiter or Graves' Disease?

A. Plenty of them.

Q. Do they exhibit symptoms that you never get from thyroid medication?

A. Never get them. The toxic symptoms in Graves' Disease seem to be caused by some other material, and I have never seen a toxic symptom similar in character to Graves' Disease, when I have given a large quantity of thyroid over a long time.

Q. How many years have you been using thyroid?

A. I have one patient right now that still is under my care, and she is 27 years of age and she was one and a half years old when I started using it; 25 and a half years on that case.

Q. Have you used it during that period on a great many other people?

A. A great many other people and a great many people with obesity; in fact, I have, right now, probably six cases under my care now.

Q. All getting thyroid medication?

A. Every one of them.

Q. Doctor, has it been your observation, or is it your opinion, that these patients who are under thyroid medication, oxidize their muscles and lose in muscle weight, or do they lose fat?

A. Well, it has actually been shown by long fasting that the muscle is the last thing to be oxidized in the body, even by long fasts. I recall one case of the late Dr. Tanner, who fasted for 48 days, and when he started to take water and milk on the forty-eighth or forty-ninth day, he still had all his muscles intact. All of his other tissues were absorbed, and in my estimation the thyroid has the same action exactly; it does not absorb any normal tissue.

Q. Now, Doctor, did you have occasion to use cascara?

A. Oh, yes.

Q. What is cascara?

A. Well, cascara is an alkaloid.

Q. What is its therapeutic effect?

A. The therapeutic effect is, we were taught many years ago that it was a tonic laxative, due to the fact that it stimulates the muscular coating of the large bowel, to increase the peristalsis and I still believe it is a tonic laxative.

Q. Would you class it as a mild laxative?

A. Very mild.

Q. Is it used by the profession in the treatment of constipation?

A. It is used by a great many of them, the majority of them.

Q. The majority of them?

A. Yes.

Q. Doctor, in your opinion, would the taking of Marmola tablets three or four times a day, for a period of 60 to 90 days, cause a laxative habit, having regard for the laxative content of cascara?

A. How much cascara do you mean?

Q. One-quarter grain.

A. No, sir.

Q. What is the U. S. P. dosage?

A. About five grains.

Q. Would the laxative content of Marmola be a very mild action?

A. Very mild, a dosage of five grains, and this is only one-quarter grain.

Q. Are you familiar with the drug known as phyto-lacca?

A. Only by literature; I had no experience in it at all.

Q. You have never used it yourself?

A. I have never used it.

Q. Do you know what the literature says it is for?

A. The literature says it is an alterative, an anti-obesity remedy, the literature says. Modernly we do not consider anything an alterative.

Q. Have you had occasion to use bladderwrack?

A. I have not.

Q. Are you familiar with the literature about it?

A. I am.

Q. What does the literature say about that?

A. The literature seems a little muddled as to the fact whether bladderwrack is due to the iodine content of the



kelp and stimulating the thyroid by the presence of this quantity of iodine present in the kelp.

Q. Is it supposed to contain some organic iodine and some salts?

A. Supposed to.

Q. Is it listed in the British Pharmacopeia?

A. Yes, sir, it is listed in the British Pharmacopeia and is given credit for being a very active obesity remedy in the Pharmacopeia.

Mr. Gust: That's all.

Examiner Norwood: Cross-examine.

### Cross-Examination

By Mr. Michael:

Q. Doctor, how long have you been familiar with the patent medicine, so-called, known as Marmola?

A. I should say about three months. You mean by that, how long have I known the preparation or been familiar with its content?

Q. I will ask you to explain the matter both ways.

A. I have been familiar with the preparation for about 15 years, in the drug stores that I owned, but as far as its contents are concerned, I am only familiar with it for about three months.

Q. Where was your drug store located?

A. On 35th and Wood Streets.

Q. Do you still own it?

A. No, sir.

Q. How long did you own the drug store?

A. I owned a number of them, but I owned that drug store for about four years.

Q. When was that?

A. I sold it two years ago.

Q. Two years ago?

A. Yes.

Q. How many drug stores have you owned and operated?

A. Four.

Q. Over how long a period of time?

A. Twenty-five years.

Q. Twenty-five years?

A. Yes.

Q. Did you ever operate more than one at a time?

A. Yes.

Q. How many?

A. Two. One at 47th and Grand Boulevard and one at 61st and Halstead Street.

Q. Do you now own a drug store or are you interested in any drug store?

A. Not interested in any drug store at all.

Q. And you haven't been for two years?

A. No, sir.

Q. During the time you operated drug stores, did you devote your time personally to them?

A. No, sir.

Q. What was your interest?

A. I simply owned it.

Q. Simply owned it?

A. Yes, I had a registered pharmacist managing it.

Q. How much of your activity or time did you devote to it?

A. Oh, a period of probably an hour a day.

Q. So in that period of 25 years during which you operated drug stores, you were interested financially and otherwise in the sale of patent medicines?

A. Only in so far as the income from the drug store was concerned, surely.

Q. That gave you an interest in the matter?

A. Yes.

Q. All of the drug stores sold patent medicines?

A. Yes, the drug stores did.

Q. Do you think that experience and that financial interest, Doctor, gave you more of a sympathetic attitude toward self-medication than if you had not had it?

A. No, I don't think so.

Q. It didn't affect you at all?

A. Not a bit. It seems to be a necessary evil in the medical profession, self-medication is a necessary evil.

Q. You consider it an evil?

A. Oh, yes, I certainly do. I am in the practice of medicine; I am trying to make a living and I would like every drug store to send me all of their patients, everybody that goes in and attempts to buy anything for self-medication, I prefer to have them come to me.

By Examiner Norwood:

Q. You think that would be better for them?

A. Well, I don't know. I wouldn't dare say that, but I don't think it would do them any harm. I am sure it wouldn't do me any harm.

By Mr. Michael:

Q. Well, are you in favor of self-medication as a policy or do you oppose it?

A. I oppose it.

By Examiner Norwood:

Q. Does it do injury in some cases?

A. It may do injury in some cases. I can understand it doing injury in cases where the drug that is bought over the counter, that has a serious depressing effect, such as

the cold cures or any of those sudden cures that may have a very serious effect upon the patient. Some of our coal-tar products are very depressing to the heart and they are sold promiscuously to the people to cure a cold in 48 hours.

By Mr. Michael:

Q. In your medical practice, Doctor, did you ever have a patient come to you who wanted to be or who should be reduced in weight, to whom you gave the directions to go to a drug store and buy Marmola tablets and take them?

A. No, sir.

Q. In your medical practice, did you ever have a patient come to you who desired to reduce his or her weight, or who needed to be reduced, to whom you gave the direction to go to a drug store and buy desiccated thyroid as put up by pharmaceutical houses and to go home and take them?

A. No, sir.

Q. What do you call or describe the condition or conditions that you would denominate as obesity?

A. An increased weight adopted or in accordance with the adopted table for that height and age of the patient.

Q. Do you call any person who is over the average weight, obese?

A. Over the average weight for the age and height of that patient?

Q. Yes.

A. Yes, I should say that patient was obese.

Q. You would not limit the term "obesity" to those cases who have extreme manifestations of overweight?

A. Extreme manifestations of overweight?

Q. Yes.

A. You mean of a dropsical condition?

Q. Oh, no, extreme overweight as compared —

A. Oh, yes, certainly I would consider them obese patients.

Q. I mean, you don't limit the term "obesity" to those extreme cases?

A. No, sir, I do not.

Q. You call any case where they are at all over the average weight —

A. Where they are materially over the average weight.

Q. All right.

A. I take into consideration family characteristics.

Q. What do you call materially over the average?

A. I should say 10 per cent over an average weight would be materially over the average weight.

Q. Ten per cent?

A. Yes.

Q. Isn't it true that many people who are not 10 per cent over the average, want to reduce and do attempt to?

A. That has not been my experience.

Q. Have you observed in any of your patients, women or men, who were not to exceed 10 per cent over the average, who wanted to reduce their weight?

A. No, I am afraid I don't get those patients.

Q. You don't get those patients?

A. No.

Q. Have you known of such cases?

A. No, I am not familiar with any of those cases.

Q. Are you not familiar with the trend of fashion which has caused people to desire to become slim and slender?

A. Oh, yes, I have read of that condition and read of taking remedies to reduce themselves to a sylph-like figure.

Q. And many of those persons wouldn't be 10 per cent over the average, would they?

A. Possibly not.



Q. Do you consider the self-administration of thyroid in some cases desirable?

A. Well, I don't believe that I would attempt to reduce that patient, but if that patient was being reduced, I think the thyroid would be the most desirable form of medication.

Q. Yes. Well, now, on account of the tendency or style to have slender figures, that was just spoken about, that would create a condition where a large general class of the people would seek to reduce, wouldn't it?

A. Yes.

Mr. Gust: I object to it as not being a proper subject for the witness.

Examiner Norwood: This is cross-examination and he can get his idea about that.

By Mr. Michael:

Q. Would such a large class include many who have physical conditions that would prohibit or make undesirable medication by the use of thyroid?

A. No, I don't think so.

Q. Can you think of any physical condition that may exist, where the administration of desiccated thyroid would not be desirable?

A. Only in a hyper-thyroid condition, and incidentally, they are, according to the latest authorities, they treat hyper-thyroidism with thyroid, due to the deficiency of the iodine content in the hyper-thyroid, and they treat hypothyroidism, and when I say "they", I am referring to the literature.

By Examiner Norwood:

Q. That is the homeopathic, isn't it?

A. No, I am not a homeopath.

By Mr. Michael:

Q. Doctor, exercise will cause loss of weight, will it not?

A. Providing the intake is reduced, exercise with increased intake will not cause loss of weight.

Q. That is, if you set over against the loss occasioned by exercise, an increased dietary intake.

A. An increased appetite, as a result of the exercise.

Q. But if you do not respond to an increased appetite?

A. It will reduce.

Q. It will reduce?

A. Certainly.

Q. What causes that reduction?

A. As far as we know, there is an increasing of the thyroid action by exercise. The exercise itself increases thyroid action through the sympathetic nervous system and it is presumed part of that loss is caused by increased activity of the thyroid.

Q. Not all of it?

A. No.

Q. What causes it?

A. Increased amount of oxidation taking place in the body calling for more blood by that extra work.

Q. Where does it take place?

A. In the cells of the body.

Q. All the cells?

A. Practically all the cells of the body.

Q. Now, does the administration of thyroid cause oxidation?

A. Yes.

Q. Where?

A. In all cells of the body.

Q. Including the tissues?

A. Well, some tissues; no great tissues, but it will,

I believe, as far as I know from reading of it, it will oxidize the tissues after the low-grade tissues have been oxidized.

Q. Will exercise increase metabolism?

A. Sometimes, yes.

Q. Does exercise, when it affects reduction in weight, act on the tissues last?

A. Acts on what tissues last?

Q. The muscular tissues.

A. Yes, it acts on the muscular tissues last. It increases the size of the muscle tissue first.

Q. What does it act upon first?

A. The low-grade tissues, the fat deposited and the accumulated materials that have not been excreted it acts on first. It oxidizes the low-grade tissues first.

Q. Does it act upon fat in the first instance, to the exclusion of other tissues?

A. Absolutely.

Q. Is it your theory that any exercise causing reduction, that the fat is all acted upon first, before the other tissues are attacked?

A. Yes, sir.

Q. And you have the same theory about the action of thyroid?

A. Absolutely.

Q. You think they act in the same way and in the same order?

A. I don't get what you mean, the same way.

Q. In regard to oxidation?

A. In the same way and in the same order, yes.

Q. Now, is that also true in using a reduced dietary intake?

A. No, I don't think so. My theory of that is, reduced dietary intake, reduced, unless it is a starvation diet, will

not oxidize the low-grade tissues, will not oxidize any tissues, unless it is a starvation diet, in which the oxidation would take place in exactly the same way as thyroid.

Q. But you can reduce by dietary intake without making it a starvation diet?

A. Well, not to any great extent.

Q. Well, for ordinary reduction, if a person wants to take off 10 pounds, say?

A. Ten pounds, yes, they would need a starvation diet to take off that.

Q. Over a period of several weeks?

A. Over a period of several weeks.

Q. A pound or a pound and a half reduction?

A. I would consider that difficult to do with a diet other than a starvation diet, unless it is accompanied with excessive exercise.

Q. What do you call a starvation diet?

A. Where the calories of a patient are reduced at least 50 per cent of what is necessary to keep them in health.

Q. You think that dietary restriction would be necessary?

A. That is my experience, that dietetic treatment is valueless unless it is down almost to a starvation diet.

Q. For slight reductions, for instance, 10 pounds?

A. Yes, slight reduction, 10 pounds.

Q. Did you ever give thyroid to a patient without first examining him?

A. No, sir, I don't give any medication without first examination.

Q. Did you ever give a patient thyroid without observing the patient from time to time?

A. Oh, I must observe him from time to time in order to make a living.

Q. Do you think both steps are the proper procedure in giving thyroid?

A. I do.

Q. You think both steps are the proper procedure, examination first and observation?

A. Then observation afterward, yes.

Q. Why do you examine a patient first before administering thyroid?

A. Because I examine a patient before I prescribe for any disease whatsoever. I consider thyroid a disease, to be a disease, I mean obesity, rather, to be a disease. Therefore, to treat any disease, I examine them, and an essential part of my examination is the average weight for that patient's height and age, and I weigh them myself to see what that average weight is. Then I know whether they are obese or not.

Q. What else do you do in your examination?

A. Take their blood pressure and listen to their heart action. Sometimes I make a urinary examination, but not often.

Q. Just explain why you take the blood pressure.

A. Because if the blood pressure is very low, I would be tempted to have that patient put in bed, because low blood pressure is depressing. I would put them in bed; if it was very high there would be no contraindication whatever for the treatment of the condition.

Q. Would you give medication of thyroid if the blood pressure was low?

A. Oh, yes, but I would put the patient in bed, because they are already straining the heart by the excessive weight.

Q. Would that mean increased observation?

A. Increased observation?



Q. Yes.

A. Not necessarily increased observation.

Q. Well, you visit the patient oftener in bed than if he were up and about?

A. Yes, I suppose we would visit them oftener in bed, but the usual direction to that patient is to go to bed and stay a week and come back and see me. We don't visit them at all.

Q. Well, you would not give medication during that period?

A. Oh, yes, I would, absolutely.

Q. Thyroid?

A. Yes, sir, and then explain to the patient, "If you have any untoward symptoms, call me."

Q. What untoward symptoms?

A. Such as nervousness, sleeplessness and sweating from the action of the thyroid.

Q. Would you anticipate those?

A. Not necessarily, but I might anticipate the use of those in low blood pressure.

Q. Are those common symptoms?

A. Of very low blood pressure?

Q. Of the taking of thyroid?

A. No, they are not common.

Q. Are they symptoms of the taking of thyroid?

A. Oh, yes.

Q. Why do you examine the heart action of the patient before you give them thyroid?

A. I don't know any specific reason for it except that we give a routine examination of it.

Q. Why do you examine the urine?

A. For the same reason, there would be no contraindi-

cation in the treatment of the condition, even though I found urinary difficulty or heart lesion.

Q. Do you give thyroid to patients that have heart lesions?

A. Yes, sir.

Q. Do you think that self-medication by the use of desiccated thyroid, by a patient having heart lesions, is desirable?

A. I don't think it could do any harm, if that is what you mean by being desirable.

Q. If you found that a patient had heart lesions and you were giving the patient thyroid, would you continue to examine the patient's heart from time to time during the treatment?

A. Yes.

Q. Why do you do that?

A. To see if it would have any action.

Q. Do you know of any physical condition that might exist in a patient that would render the taking of desiccated thyroid dangerous to the patient?

A. It depends upon the dosage of thyroid.

Q. Well, any dosage?

A. Yes, I can readily understand a hyper-thyroid condition could, in large doses, that it might do some damage to that patient.

Q. What condition?

A. A hyper-thyroid condition. That is the only condition I could understand where it would do any damage.

Q. Would that hyper-thyroid condition be in conjunction with other physical conditions that might be affected?

A. Only thyrotoxicosis, such as toxic hyper-thyroidism, that's all.

Q. And you would not consider that any condition of any

other organ of the body would render the taking of thyroid as dangerous or undesirable?

A. No, sir, I would not.

Q. Why do you say, Doctor, that thyroid is always indicated in the treatment of obesity?

A. That is my opinion.

Q. Well, there must be some reason.

A. The reason is, whenever obesity is due to a derangement of the thyroid or the endocrine system, I believe thyroid regulates the endocrine system and I frequently add ovarian extract in female types of cases, but I believe in all cases of obesity, they are due to thyroid disfunction.

Q. Is your view along that line, Doctor, in conformity with the general view?

A. Unfortunately, there is no general view among the medical profession on obesity.

Q. What about thyroid?

A. Well, those people that believe that obesity is caused by a disfunction of the thyroid are of the opinion that thyroid extract is always indicated.

Q. Well, that is something different.

A. No, I thought that was the question you asked me.

Q. No. Do you hold the view, Doctor, that practically all cases of obesity or over-weight are caused by a disfunction of the thyroid gland?

A. I certainly do.

Q. You don't entertain the view, then, that the great majority of cases of over-weight and of obesity are caused by overeating and the lack of exercise?

A. I don't think so. That has not been my experience.

Q. And do you say that the consensus of medical opinion is that the majority of obesity cases and over-weight are not caused by over-eating?

A. Yes, that is my opinion. My opinion is, as far as I have read, that a great many of them are agreeing with me on that.

Q. Have you ever run across the other view?

A. Oh, yes, frequently, frequently.

Q. And it is the general view, isn't it?

A. No, sir, I think my view would be the general view today. I know that we discussed it frequently in meetings.

Q. Then you don't consider that over-eating will cause over-weight?

A. Yes, it will.

Q. It will?

A. It positively will, but I don't consider that it causes over-weight in most of the people that are obese.

Q. Well, it was your observation, as a physician, that most people over-eat?

A. No, on the contrary.

Q. They do not?

A. Especially obese people that frequently come in to me and they say "I cannot understand why I am fat, because I eat very little."

Q. You are talking about extreme obesity?

A. I am slightly obese for my age and my height.

Q. Well, you have a sedentary existence.

A. Yes, but the amount I eat is about one-half of what other men eat in a sedentary existence.

Q. You do give metabolic tests in some cases?

A. Oh, yes, in some cases.

Q. In what percentage of the cases?

A. In probably—do you mean in obese or hypo-thyroids?

Q. Yes.

A. The hyper or the hypo?

Q. Where you are contemplating reducing.

A. I don't suppose there is more than 2 per cent.

Q. Why do you do it in those cases?

A. Because they want it.

Q. In other words, at their request.

A. That is their request. My personal opinion of it, as far as its value is concerned as practiced under the present method of taking it, it is almost valueless.

Q. But it is an indication?

A. It is an indication, yes.

Q. An indication of what?

A. Of whether the subject is a hyper-thyroid person. I believe it is a negative result when it is a question of normal or hypo-thyroidism, being present.

Q. Have you found patients to whom you gave treatment for reduction, whose metabolic rate was normal?

A. In those cases which I have taken—the metabolic rate, you mean?

Q. Yes.

A. Oh, yes.

Q. Would that indicate to you that their thyroid gland was functioning properly?

A. It would not.

Q. What made you think their thyroid gland was not functioning normally?

A. Because I haven't any confidence in the matter. I take the metabolic reading and in a half hour that metabolic reading will be entirely different. For the same reason that I take blood pressure in the hospital and I take it every half hour, if I am particularly interested in what the actual blood pressure is.

Q. Is it your opinion that desiccated thyroid does not



produce a toxic condition supported by the consensus of the medical opinion?

A. Yes, I believe it is supported by a consensus of medical opinion today. I think the minority of research workers will claim it is not true, but they are the minority. I think that theory is supported entirely by a vast majority of the clinical experienced men.

Q. Have you had experimental experience along that line?

A. No, sir, I just read of their experiments.

Q. Now, Doctor, what conditions do you know of, that a patient may have, that would cause them to be what you term sensitive to thyroid?

A. We don't know the condition. It is utterly impossible to answer the question. It is unknown, a sensitivity to any material or drug, the cause of it is absolutely unknown.

Q. Do you make a distinction between a person being sensitive to a drug and conditions such as toxic?

A. Oh, yes.

Q. There is a difference there?

A. Yes, sir, sensitivity is a reaction to irritation, where toxicity is an actual poisoning by a foreign substance put in; there is an entire difference. Toxicity may be lasting whereas, sensitivity is not lasting at all; it is transient.

Q. So then, Doctor, in your use of the terms, if desiccated thyroid can produce a toxic condition, you would not recognize that as a sensitivity?

A. No, sir.

Q. Now, I believe you said that thyroid, when taken internally, stimulates all organs of the body?

A. Yes, sir.

Q. Is that a direct stimulation or a stimulation due to oxidation?

A. We don't know whether it is a direct stimulation or a stimulation of the sympathetic nervous system. Whether it is a stimulation of the thyroid primarily or secondarily the stimulation from the thyroid; we do not know.

Q. It might be stimulation due to oxidation?

A. It might be due to oxidation; it has not been proven that it is not.

Q. Now, exercise stimulates every organ of the body, doesn't it?

A. Yes, sir.

Q. Whether the exercise is the exercise of that organ or merely muscular exercise of the arms or legs?

A. It makes no difference.

Q. It makes no difference?

A. No.

Q. That stimulation is due to oxidation?

A. Nobody knows whether the material, the sugar stored up in the muscle fibre is not being oxidized and causing this amount of stimulation.

Q. But the stimulation would be of the same manner and kind as stimulation in taking desiccated thyroid?

A. Very likely so.

Q. What is the action of cascara on the muscles of the intestines?

A. It is supposed to stimulate the muscles of the large intestine, principally.

Q. Do you make it a practice, Doctor, of giving any laxative that stimulates the muscles of the large intestine, over long periods of time, regularly, such as two or three months?

A. That is the only kind of laxative I use over that length of time.

Q. But do you make a practice of giving a laxative over that long period of time, which laxative stimulates the muscles of the large intestine?

A. Yes, sir, quite frequently.

Q. Or do you only do it in extreme cases?

A. In extreme cases I do not use any such small dose as you refer to.

Q. Well, it must be an extreme case that demands medication over so long a period of time, regularly.

A. You refer to a case of obesity.

Q. No, any cases.

A. Any case?

Q. Yes.

A. It would be an extreme case that would require a drug over that length of time, certainly.

Q. Well, take a case of mild constipation, would you give a laxative that stimulates the muscles of the large intestine, over that long a period of time?

A. Most assuredly, I would.

Q. Now, is it a fact, Doctor, that the stimulation of any muscle will, continually applied a long period of time, weaken the muscle?

A. Not unless it is fatigued.

Q. Won't it get fatigued over a long period of time?

A. No, no more than exercise, than the exercise of an athlete that stimulates his muscles continually. He will develop muscular fiber stronger than one that does not. It is continual stimulation.

Q. Did you ever hear of cascara causing lack of function of the muscle of the large intestine?

A. I never have.

Q. Is it possible for you to do it?

A. I don't believe it is.

Q. Do you think the muscles of the large intestine are different from any other muscle in regard to long continued stimulation?

A. No, I think it is a question entirely of the amount of stimulation. I don't think any muscle is injured by stimulation, unless it is brought to fatigue.

Q. Doesn't any muscle get fatigued by constant action?

A. No, not within a reasonable amount of stimulation, it does not.

Q. When you attempt an artificial stimulation, that is not normal.

A. Would you consider exercise as a physiological stimulant?

Q. I am asking you whether cascara—

A. Cascara, I would not consider an artificial stimulant, using it in small doses.

Q. Well, it is a foreign stimulation, isn't it?

A. Yes, it is a foreign stimulation.

Q. What is the condition of the thyroid gland in myxedema and cretinism?

A. It is frequently increased in size in myxedema. It is reduced in function, but in cretinism it is almost totally absent.

Q. I believe you stated such cases respond to the administration of desiccated thyroid.

A. Oh, yes, always. They are absolutely specific in the treatment of them.

Q. And in those cases is such response due to stimulation of the thyroid gland?

A. No doubt it does supply either the natural hormones or something.

Q. That is a substitution, isn't it?

A. It may be. I don't know; nobody knows.

Q. Well, if there is a loss of function, and a loss of the organ, there is nothing to stimulate, is there?

A. Absolutely nothing. Therefore, it is a substitution.

Q. Doctor, during the time you owned drug stores, did you ever, in that experience, engage to any extent in the sale of articles that were sold in the stores?

A. No, not selling them; you mean as a clerk in the store, a salesman or a clerk or a pharmacist in the store?

Q. Well, in any degree?

A. No.

Q. You never did, even incidentally?

A. I may have incidentally sold a stamp; I don't remember whether I did or not, but I never was in the habit of going behind the counter to sell.

Q. But your stores handled pharmaceutical thyroid preparations?

A. Yes, sir.

Q. Such preparations were sold to the public on prescription?

A. Such preparations were sold to the public on prescription or otherwise.

Q. Or otherwise, if they called for it?

A. If they called for it, yes sir.

Q. Do you recall what makes of pharmaceutical thyroid preparations you handled in your stores?

A. I think all of them; practically all of them, from Armour's to Wilson's or any of the Parke Davis, any of those places. I don't recall any particular one; maybe some physician would specify Burroughs and Wellcome's preparations, and druggists necessarily would put those up. Other physicians come in and demand that he have



Squibb's products, and the product was bought and sold as a Squibb's product.

Q. Were any of these drug stores operated under your own name?

A. No, sir, I am not a registered pharmacist at the present time.

Q. Was any public announcement or any information given as to the ownership of your stores?

A. Only in the recorder's office in the purchase and sale.

Q. Well, you operated, I presume, under a trade name of some kind?

A. We operated under different names. For example, I operated on 61st and Halstead Streets; I operated under the name of the Walgreen Drug Store. Mr. Walgreen was my manager. On 47th and Grand Boulevard we bought from McLean and also bought his name and continued to operate as the McLean Drug Store. The one at 35th Street was a department store, a drug department in the department store known as Andelson's Drug Store.

Q. None of those were incorporated businesses?

A. No, they were simply investments.

Q. You were the sole owner?

A. No, at 47th Street and Grand Boulevard another man and I owned it.

Q. But the rest of them—

A. The rest of them, I was the sole owner. I took all the losses.

Q. Did you make it known in any way that you were the owner, or interested in them?

A. I presume the wholesale houses knew I was the owner, when I paid my bills.

Mr. Michael: That's all.

Mr. Gust: That's all, Doctor.

Examiner Norwood: You are excused.

(The witness was excused.)

Examiner Norwood: Gentlemen, we will take a recess until 2:45 p. m.

(Whereupon, at 1:45 o'clock, p. m., a recess was taken until 2:45 o'clock, p. m.)

### AFTERNOON SESSION

2:45 p. m.

Examiner Norwood: The hearing will come to order. Call your next witness.

Mr. Gust: I will ask Dr. Eastman to take the stand.

LEWIS K. EASTMAN was thereupon called as a witness for the respondent, and having been first duly sworn, testified as follows:

#### Direct Examination

By Mr. Gust:

Q. Will you state your full name, please?

A. Lewis K. Eastman.

Q. Where do you live?

A. 1342 North Park Avenue, River Forest, Illinois.

Q. What is your business or profession?

A. Physician and surgeon.

Q. Are you licensed to practice in the State of Illinois?

A. I am.

Q. Since when?

A. Since November, 1917.

Q. Will you give us briefly your educational training and experience?

A. I graduated from Loyola University School of Medicine. I served an internship of one year at Columbus Hospital, Chicago, Illinois. I joined the United States Army in January, 1918, and served with the 76th Division, 301st Field Hospital Train. I was in France until May 27, 1919. I was honorably discharged from the United States Army on Friday the 13th, in 1919. I associated myself with Dr. James J. McGwin and served a preceptorship in surgery, of two years. I was appointed later, surgeon to General Motors, and in 1923, I organized my own clinic at 1621 North Kostner Avenue. I was appointed Surgeon of the United States Rubber Company in 1923 and the Strom Ball Bearing Company in 1923. I was Coroner's Physician of Cook County in 1925 and 1926. I practiced privately exclusively from that time until the present time, and in the intervening period I served as Surgeon to the Chicago Black Hawk Hockey Team. I was Surgeon to the Chicago Cardinal Team. At the present time, I am practicing private medicine.

Q. Now, Doctor, your office is where?

A. I have two offices, I have one at 1615 North Kostner Avenue, my own personal clinic, and a downtown office at 201 North Wells Street.

Q. Do you have a hospital at Kostner Avenue?

A. I operate a clinic and a hospital. The hospital is known as the Danish-American Hospital, Incorporated.

Q. Are you head physician of that hospital?

A. I am chief surgeon of a staff of nineteen physicians.

Q. Doctor, are you familiar with the biological product called desiccated thyroid?

A. I am.

Q. Have you had occasion to use it in your practice?

A. I have.

Q. For what purposes?

A. From 1920 to 1924 and 1926, I practiced a great deal of bone surgery. Thyroid was used considerably by me at that time, for the treatment of malunion of fractures. I have used it for cretinism of children, hypothyroidism, colloidal goiters, the treatment of obesity, and the treatment of general endocrine off-balance.

Q. Have you had occasion to observe its effect on human beings when taken orally?

A. I have.

Q. Have you had occasion to read the literature and books, both during your educational training and subsequently, during your practice?

A. Yes. I read a number of books on thyroid; I read the current medical journals, as they appear before me.

Q. Are you familiar with the dosage as stated in the United States Pharmacopeia?

A. I am.

Q. What is it?

A. It is in the United States Pharmacopeia at the present time as one grain.

Q. Does that mean one grain per dose?

A. One grain at one time, yes.

Q. To be repeated how often?

A. As often as necessary.

Q. Three or four times a day?

A. It may be oftener.

Q. What is the effect of desiccated thyroid in general when given to a patient?

A. The effect of desiccated thyroid is, it increases the rate of metabolism; it speeds up the metabolism, and it

acts as a general tonic and in those particular cases where the endocrine bodies are off-balance, it tends to tone up the general health.

Q. What is its effect and what is its purpose when you give it in bone surgery?

A. That would be covered in the last answer I made in this respect; there are two smaller glands called parathyroid, which work synonymously with the thyroid, and the effect in thyroid is to assist the other hormone-secreting, or internal secretory glands.

Q. Does it promote union of the bones?

A. It aids and promotes the union.

Q. Doctor, I take it a person's metabolism may be increased by other things besides thyroid medication.

A. Yes.

Q. For instance?

A. The most common is exercise.

Q. Does the ingestion of food increase the metabolic rate?

A. It does.

Q. Now, Doctor, how many obese people do you treat?

A. At the present time I am treating 86. Over a period of time it would be hard for me to estimate. In the last 10 or 12 years probably it would run into several thousand.

Q. What medication do you give them?

A. I use thyroid in all obesity cases. All obese people need thyroid extract. They are all hypo-thyroids.

Q. Doctor, what dosage do you start with?

A. Two or three grains three or four times a day, and I have run it as high as thirty grains.

Q. Over what period of time do you give it?

A. Depending entirely upon the patient, the way the patient responds to it. I have given it over a period of a year or two years, in a good many cases.



Q. Doctor, have you ever found any harmful results from U. S. P. doses or smaller than U. S. P. doses of desiccated thyroid given to an obese person?

A. I have not.

Q. Do you give a basal metabolic test before you give thyroid to obese people?

A. Not any more. In my early practice, when I had not sufficient experience with obesity, I did run a number of metabolic tests, but after finding several hundred of them all below normal, it is not really necessary to do that.

Q. Do you have a basal metabolic machine?

A. I have.

Q. Do you use it when you suspect hyper-thyroidism?

A. Always.

Q. What are the symptoms of hyper-thyroidism?

A. Loss of weight, extreme nervousness, rapid pulse, with a definite hyper-tension and high blood pressure.

Q. Have you ever had any persons come to you who were obese and seeking to be treated for obesity, who had hyper-thyroidism?

A. Never.

Q. Did you ever see an obese patient that was hyper-thyroid ?

A. It would be impossible, and I never have seen one.

Q. Then, I take it, the symptoms of hyper-thyroidism, the outstanding symptom is weight loss?

A. That's right; it is.

Q. Doctor, do you treat obesity entirely with thyroid medication?

A. I recommend diet to them and a moderate degree of exercise.

Q. Do you regard thyroid as indicated in all cases of

obesity?

A. All cases of obesity.

Q. Have you ever found any patients who came to you, who had any condition that you regarded thyroid as being contraindicated, I mean, any obese patients?

A. I never have.

Q. Doctor, is thyroid the outstanding medicant used by the medical profession in the treatment of obesity?

A. Yes, it is the only known drug that can be safely given in the treatment of obesity. There are other drugs, but none as safe and harmless as desiccated thyroid.

Q. Have you had experience with dinitrophenol?

A. Personally, I have taken it myself.

Q. Did you abandon that as a treatment for obesity?

A. I did.

Q. During your experience in the army and at other times, did you have occasion to find out what the medical profession was, in general, using for the treatment of obesity, Doctor?

A. Yes, in our conferences and personal talks amongst ourselves, the question of obesity often arose, due to our gaining weight, especially during the Army of Occupation in Germany, amongst the officers and the medical corps, my fellow-associates at that time, and we all agreed that thyroid was our safest and most useful drug.

Q. In the treatment of obesity?

A. Yes.

Q. Have you had occasion to examine athletes from time to time?

A. I have.

Q. Prize fighters, and so forth?

A. I have.

Q. On what occasions?

A. The primary Golden Gloves, and for the first five years of the Golden Gloves Tournament I was Chief Surgeon and Chief Examiner amongst prize fighters, in the training of prize fighters who are over-weight and lack tone, we have used thyroid extract. In one or two hockey players that I have treated, I gave thyroid medication.

Q. For general tone and reduction of weight?

A. Obesity, particularly, yes.

Q. Particularly obesity?

A. Yes.

Q. Did you say you treated some of the Chicago base ball players?

A. I treated them, but not for obesity. I treated Hartnett and Bush, and a few of those boys.

Q. You never had occasion to treat them for obesity?

A. Not for obesity, no.

Q. Doctor, have you examined the formula for Marmola?

A. I have.

Q. And have you examined the booklet that comes in the package?

A. I have.

Q. Are you familiar with the therapeutic properties of the various ingredients?

A. I am.

Q. Doctor, in your opinion, can the average or usual or ordinary obese person take Marmola tablets for a period of 60 to 90 days, under the instructions and advice contained in the package and in the booklet, and without medical supervision and without harm?

A. They can.

Q. In your opinion, would Marmola tablets, if taken as directed on the package and in the booklet, be effective

to reduce weight in the average, usual, ordinary obese person?

A. It would reduce it slowly, yes.

Q. If you wanted to reduce faster, you would have to increase the dosage?

A. That's right.

Q. I take it that you attempt to push the drug to its physiological limit, where people are not responding as rapidly as you desire to have them?

A. That's right.

Q. For that reason you many times increase the dosage?

A. That's right.

Examiner Norwood: In asking that question, do you understand there is any caution in that booklet or the instructions? It is not just clear just which booklet or package you refer to.

Mr. Gust: The current booklet. We do not have the exhibit here.

Examiner Norwood: All right.

The Witness: The one I read had a gray cover, and I believe it had some figures on the front of it, about 20,000,000, or something like that. That is the one I read.

By Examiner Norwood:

Q. Do you remember reading any caution?

A. No, I don't believe I do. I don't remember how many tablets were in the box.

Mr. Gust: The directions are to take four a day and that each contains a half grain of desiccated thyroid, and one box contains one week's treatment, 28 tablets, and the directions are further to continue the treatment for 60 or 90 days, unless, in the meantime, a satisfactory weight reduction is accomplished.

Mr. Hornibrook: I understood it, until you were satisfied with your reduction.

Mr. Gust: Well, something of that sort, either until a satisfactory weight reduction has been accomplished or the person was satisfied with the result.

Examiner Norwood: In other words, whenever it is perfectly safe to take it without issuing any cautions as to symptoms that may be produced.

The Witness: I answered the question with this thought in mind: How many tablets were there in a box? If some patient would become over-anxious and would take the entire box at one time, I was thinking what might happen to them, and I will answer that by saying that I took 30 grains in one dose, myself.

By Mr. Gust:

Q. You took 30 grains of desiccated thyroid?

A. Yes, a week ago yesterday.

Q. Did you experience any untoward results?

A. Other than producing perspiration, none.

Q. Did you observe any increased heart action?

A. Slightly, yes. It increased especially if I tried it by walking up three flights of stairs and coming down, and that night, for the first hour after retiring, I did not go to sleep, but the next morning I was perfectly normal. My rest that night was not as sound as it should have been.

Q. That was a 30-grain dose?

A. At one time; yes, sir.

By Examiner Norwood:

Q. Would you be willing to repeat that three times a week?

A. Three times a week?

Q. Yes.

A. For what purposes? For the purpose of just losing weight? That would be three times as much as one box of Marmola.

Q. If you did that three times a week?



A. I would anticipate if I took 30 grains three times a week, I would have an accumulated effect in a short time, but I do know this, that the symptoms do subside in 24 hours; that my heart action was not a bit affected by it.

Examiner Norwood: All right.

By Mr. Gust:

Q. Doctor, have you ever observed these symptoms of excessive thyroid medication from the ingestion of as little as two grains of it a day?

A. No, patients with two grains a day will not have any symptoms whatever. It will not increase the heart rate, or will not make them nervous.

Q. Those are symptoms that come with larger doses?

A. Yes.

Q. And have you occasionally given enough thyroid to your patients to produce these symptoms?

A. Yes, I have.

Q. And then? what do you do?

A. Take them off of it.

Q. And what happens?

A. They return to normal in from 24 to 36 hours.

Q. Have you examined them to find out whether they suffered any bodily harm from the experience?

A. Yes, sir, I have had cases in private practice, where a man is going to take out insurance and he gained weight and he wants to reduce, and he has to do it rather rapidly. That type of patient, who is quite active, he naturally needs food, and the dietetic treatment is forgotten and increased doses of thyroid, up to 12 and 15 grains per day are probably necessary to reduce that man, and I have observed on two or three occasions where there is an increase in heart action and they complain that they have slight nervousness and perspiration.

Q. Your effort there was to reduce them very rapidly?

A. That's right.

Q. Because they wanted to take a medical examination.

A. That's right.

Q. Did they suffer any harm to their heart?

A. Oh, no; no harm whatsoever. They return to normal as soon as you take them off.

Q. Do they suffer any harm to the kidneys or the liver, or other organs of the body?

A. No, they don't have any trouble.

Q. Are these physiological symptoms, Doctor?

A. Strictly so, all physiologic. The thyroid itself is a part of the body. It is taken from an animal similar to our own body, and the gland is desiccated and then standardized so that it is not a medicine, but it is a biologic and replaces something we are missing, and anybody that is obese is missing some internal secretory gland, and thyroid has been found to be the most beneficial to help that.

Q. Now, Doctor, in your opinion, can these Marmola tablets be safely taken without previously going to a doctor or without having medical supervision, by the average obese person?

A. Yes, the doses in there are so small that it would harm no one.

Q. Doctor, do you regard thyroid in that dosage as being at all toxic?

A. Not a bit.

Q. Did you read the booklet about the diet advice?

A. I just glanced through the diet and saw the advice given with reference to carbohydrate food, etc.

Q. Is that a good instruction to give patients seeking to reduce?

A. Excellent.

Q. What diet advice do you give them?

A. I give them a diet; I increase the protein and decrease the fat and carbohydrate.

Q. Do you think it is necessary that you diet during thyroid medication at all?

A. It is not strictly necessary but people who are obese are mentally not alert and realize that they are logy, lethargic, and when they really become serious about reducing, diet and thyroid are excellent advice to anyone.

Q. Now, Doctor, what have you observed to be the effect on the general health of the patients who take thyroid medication?

A. The hypo-thyroid patients primarily, as I said before, are lethargic; they are uncomfortable. Thyroid tones up the muscles and increases their metabolic rate. They become more mentally alert and more physically active.

Q. Do they go back to the doctor and say they feel better, generally?

A. Always.

Q. That they have more vim and vitality?

A. And always feel better; that is just what they say.

Q. Now, Doctor, are some people sensitive to drugs, and foods, and other things?

A. There are a number of people that have idiosyncrasies with foods and occasionally with drugs.

Q. Did you ever find anybody that had an idiosyncrasy to thyroid?

A. I have not.

Q. Would you regard it rather unusual to find a person who had an idiosyncrasy for something that was normally in the body all the time?

A. I never found anybody that had an idiosyncrasy of biologics of any kind. There are foods and occasionally,

the certain synthetic products, such as aspirin, I often have people who have an idiosyncrasy to aspirin, but biologic, I never had anyone that had an idiosyncrasy for a biologic.

Q. Doctor, have you ever had a man come to you who was suffering from hyper-thyroidism who was obese and seeking to be treated for his obesity?

A. Hyper-thyroids are never obese. They are — their musculature is under-tone and they have no subcutaneous fat whatsoever. They are strictly hyper individuals.

Q. Doctor, under thyroid medication is it your opinion that the most recently deposited fat is the first to be oxidized?

A. No, that is not the way thyroid works. Thyroid, being a biologic, increases the normal metabolism, and it works, it acts on all of the tissues, particularly protein tissue, and by increasing metabolism we get an increased burning up of the easiest tissue to burn, which is adipose tissue, in other words fat.

Q. There is no damage to the muscles of the body on thyroid medication?

A. No, thyroid medication benefits all the muscles; in an obese patient it increases the tone and gradually absorbs those little, fine particles of the fatty degeneration of the heart, so that a fatty organic heart is improved with thyroid medication.

Q. Doctor, do you have occasion to treat toxic goiter or Graves' Disease, or Basedow's Disease, occasionally?

A. Yes, sir.

Q. Do you find those people obese?

A. Never.

Q. Do they exhibit symptoms that are never exhibited by patients who are under thyroid medication?

A. Basedow's Disease and Graves' Disease are all

hyperthyroidism and exhibit definite symptoms of hyperthyroidism.

Q. Did you ever see any exophthalmos from thyroid medication?

A. Never.

Q. That is a symptom of Graves' Disease, it is?

A. That's right.

Q. Is it the theory of the profession generally that Graves' Disease and toxic goiter is caused by something in the body which is reacting unfavorably on the thyroid?

A. Yes, the thyroid secretion which is normally beneficial, becomes toxic or poisonous to the system.

Q. Thyroid makes some substance which it does not normally make, is that it?

A. That's right.

Q. It is the theory that it is that substance which is causing exophthalmos and the other symptoms?

A. That is right.

Q. Doctor, do you use cascara in your practice?

A. I do.

Q. Did you give your obese patients a laxative along with thyroid medication?

A. Yes, for this reason, that all obese patients have a lack of muscle tone and most of them suffer from intestinal disturbance, the food is not eliminated as regularly and they have intestinal symptoms; they have fermentative enteritis and it is good practice to give a mild laxative with the treatment of obesity.

Q. Are you familiar with the drug cascara sagrada?

A. I use a lot of it.

Q. Are you familiar with the dosage as stated in U. S. P.?

A. Yes, anywhere from eight to fifteen grains is a



favorable dose. There are a number of other derivatives of cascara and its derivatives are used.

Q. What kind of laxative is it, a mild or a harsh laxative?

A. A very mild laxative. It is used in chronic constipation for that reason.

Q. In your opinion, Doctor, would a patient that took a quarter of a grain four times a day for 60 or 90 days, be apt to get the laxative habit?

A. He would not.

Q. Do you think that would harm an obese patient, taking thyroid to reduce?

A. It would not.

Q. Would you think it would be beneficial to him?

A. It would aid the muscular tone and cascara sagrada is a mild muscular tonic; it acts a great deal like one of its close relatives aloes, except there is one thing eliminated, that is the griping that aloes produces.

Q. It acts on the large intestine and increases peristalsis?

A. It acts on the muscle and increases muscle tone and increases peristalsis.

Q. Doctor, in your opinion, is cascara sagrada in a dosage of as low as one-quarter grain, apt to be harmful if given four times a day from 60 to 90 days to obese people?

A. It is not harmful.

Q. Are you familiar with the drug phytolacca?

A. I am.

Q. What therapeutic effect has that drug?

A. Phytolacca is an old herb used for a number of years. It stimulates muscle tone, and in larger doses it is an emetic.

Q. Is half a grain a large or small dose?

A. A very small dose.

Q. Do you know, whether or not it is listed in the British Pharmacopeia?

A. Yes, in the British Pharmacopeia; but it is not in ours, but it is in our National Formulary.

Q. Do you regard a dosage of a half a grain as being harmful to obese people?

A. That is a very, very small dose; it is not harmful to anyone.

Q. Are you familiar with the drug known as bladderwrack?

A. I am.

Q. What is its effect?

A. Bladderwrack is believed to have some properties that will aid and increase metabolism by its action on the thyroid gland.

Q. Is it listed in the British Pharmacopeia?

A. It is in the British Pharmacopeia and the United States National Formulary.

Q. Is it indicated or said there to be indicated in obesity?

A. Yes.

Q. Is it indicated or said there to be indicated in obesity?

A. Yes.

Q. Would you think that the addition of a grain of bladderwrack in the Marmola formula would tend to improve the formula?

A. Yes, it would improve the formula. It would aid the desiccated thyroid in its stimulation of the obese individual's own thyroid. It would act as a definite stimulant. It is not a biologic; it is a drug.

Q. It is your opinion, is it, Doctor, that thyroid medi-

cation by ingestion orally of desiccated thyroid tends to stimulate the thyroid gland of the person taking it?

A. Yes, it acts in two ways, by the ingestion of the thyroid itself it relieves the work of the thyroid which is not functioning properly and gives certain portions of it rest, and in due time it will function properly itself. We know that to be true, after we treat patients sometimes for three or four months and reduce them, they never regain weight again. That's the reason we use biologics instead of drugs.

Q. It has been your experience, Doctor, has it, that a good many obese patients who will reduce through thyroid medication, never regain their obesity again?

A. That's right.

Mr. Gust: I think that's all.

Examiner Norwood: *Cross-examine.*

Mr. Michael: May we have a recess?

Examiner Norwood: Yes, we will take a five-minute recess.

(A short recess was thereupon taken.)

Examiner Norwood: Proceed gentlemen.

### Cross Examination

By Mr. Hornibrook:

Q. Doctor, what school did you graduate from?

A. Loyola University.

Q. In what year?

A. 1917.

Q. How old a man are you?

A. I am forty.

Q. What was the occasion for your taking 30 grains of thyroid?

A. Thirty grains of thyroid?

Q. Yes.

A. About three years ago I weighed 276 pounds, and I started to reduce, and on three or four occasions we had, I should say, my fellow-practitioners had an argument with reference to the amount of thyroid I was taking, and in talking it over with Mr. Gust, about the amount, and with Dr. Scott, about the amount of thyroid I had taken, I told them I would take 30 grains and show them it would not harm me, and I took it.

Q. How long ago was that?

A. A week ago yesterday.

Q. How did you get in touch with Mr. Gust?

A. I got in touch with him through Dr. Scott.

Q. Who is Dr. Scott?

A. A physician practicing in Chicago. I have known him for about 15 or 18 years.

Q. What is his full name?

A. Orlando Francis Scott.

Q. That is the gentleman sitting right over there?

A. The gentleman right over there, yes.

Q. Are you a member of any medical society here in Chicago?

A. I am not a member of any medical society in the United States.

Q. You are of an athletic type, are you not?

A. Me?

Q. Yes.

A. Well, I don't know what you mean; I can run and I can ride a horse.

Q. You are a strong man, are you not?

A. I am not very strong. Do you mean physically?

Q. Yes.

A. Well, due to the lack of exercise, I am not, but I think I am in good health.

Q. What do you weigh?

A. I weigh today 207 pounds with my clothes off.

Q. What do you stand?

A. About 5 foot 10½ inches tall.

Q. Would you be classified as an obese person?

A. Yes. My normal weight should be about 170 pounds.

Q. Do you do any thing for that obesity?

A. At the present time?

Q. Yes.

A. Yes, I watch my diet and I take some thyroid occasionally. I have taken dinitrophenol.

Q. Do you specialize in the treatment of obesity?

A. Oh, no, I practice general medicine and deliver babies or fix a broken leg.

Q. What is the nature of your hospital? Is it a hospital or a sanitarium?

A. My hospital is a general hospital. Primarily, it was organized for my own private practice. At that time I was doing a lot of industrial surgery, and times have changed and my practice for the last 10 years has been just the ordinary practice of medicine.

Q. Do you own this hospital?

A. No, sir, it is a corporation at the present time. Formerly, I was an owner of it.

Q. Is the hospital advertised?

A. No, never advertises.

Q. How many patients do you say you are treating now?

A. I have 86 patients for obesity at the present time.

Q. Are all of those on a diet as well?



A. Oh, yes.

Q. You do not prescribe the same diet for all your patients, do you?

A. In obesity they are practically the same, cut down the amount of carbohydrates, eliminate as much salt as possible.

Q. Wouldn't your prescription, so far as diet is concerned, be governed largely by each individual case, say, one that was very obese, you would put them on a more severe diet than those only moderately obese?

A. To the contrary, the larger the person, the greater the amount of calories they require. The caloric intake of a patient is hard to measure sometimes, but the bigger the fellow, the more he has to cover and the more he needs.

Q. So the diet does vary with each patient?

A. It varies some. I don't have any particularly strict diet; I tell them what foods to eat; I tell them white bread contains a lot of carbohydrates and is not good for them, and I tell them that bananas contain 20 per cent carbohydrate, and certain vegetables only contain five.

Q. The same is true in the administration of thyroid; you vary the dose in each particular case?

A. In private practice I have a set of capsules that I prescribe and I give them, beginning with about two grains, and increasing the dose, and I see these patients sometimes 60 days apart, and usually, about once a month.

Q. Do you not have some patients that you require to visit you oftener than once a month?

A. Perhaps psychologically.

Q. What do you mean by that?

A. Well, some patients require you to sit down and talk to them a great deal, and require a lot of pampering, and others do not. A person who is really interested will

sit down and I will tell them what they have got to do and "Here is your medicine."

Q. Before you prescribe thyroid, you subject each patient to a physical examination?

A. I don't necessarily, no. A good many cases, obesity cases, we do not have to, and we do not.

Q. And some you do?

A. Well, somebody comes in and says, "I want a physical examination," and in the course of it they will say, "I want to reduce, or what do you find wrong?" And I might say, "You are overweight." But if they come in cold off the street, we do not.

Q. You just put them on thyroid?

A. I tell them what to do, "here it is: this will take care of you."

Q. You always prescribe a diet along with the thyroid?

A. Yes.

Q. Now, you say you have been specializing in obesity how long, how many years?

A. I believe I told you that I am not specializing in obesity.

Q. Well, you have been treating it?

A. I have been treating obesity cases as they come in to me. Today I had one obese patient, a curetment, and an operation on the appendix. Now, tomorrow I may treat no obesity, and the next day I may treat five, and deliver three babies, and I might not have any for a month. My practice is diversified general practice of medicine, just an ordinary family doctor.

Q. Do you recall that there was a vogue for slenderness among women in the last 10 or 15 years?

A. No, I didn't notice particularly.

Q. In all your experience have you not had women who are not obese, who desire to reduce?

A. Well, it seems right now I do know this, that everybody I meet is on a diet or wants to reduce, and that started I believe, seven years ago, when the Mayo Clinic came out with an 18-day diet of grape juice or something else, which did a lot of harm to a lot of people, and it was printed in every newspaper. At that time I had occasion to treat a lot of people who were deficient in some food, due to the unusual amount of publicity by that clinic.

Q. There was a period when a great number of women who are not obese desired to reduce, was there not?

A. Well, I think if a woman can go in and buy a dress off the shelf and buy it reasonable, I think she is satisfied. My patients are just ordinary working people, and if their women want to reduce, it is because their husbands think they are too fat or do not look good or feel good.

Q. There are that kind of people?

A. A lot of them.

Q. You would not prescribe thyroid in a case of hyperthyroidism?

A. Oh, no.

Q. Have you had much experience with hyperthyroidism?

A. That seems to run in cycles. I checked up on my hypers, hyperthyroidism, and I haven't had a hyperthyroid in a little over 16 months. One year I had 30 cases. It seems to be a cycle. They seem to appear in the form of sporadic or epidemic. Hyperthyroidism is very easily recognized.

Q. You would say, wouldn't you, it is not proper to use desiccated thyroid in a case of hyperthyroidism?

A. In hyperthyroidism, strange as it may seem to you, I have used small doses of thyroid with some improvement, on the theory that a thyroid, in hyperthyroidism, is secret-

ing an improper internal secretion, and we do get benefit from it, and the fact that we give iodine in hyperthyroidism will bear me out in theory, because the secretion in the thyroid is called iodine.

Q. But the object is not to stimulate the thyroid gland; that is already over-stimulated?

A. No. it is not. A good many times in a person who is suffering from hyperthyroidism, the fact is that the gland is improperly functioning and that the addition of a small amount of thyroid will oftentimes get it back in balance and will help the thyroid secretion.

Q. You would say in the case of hyperthyroidism that desiccated thyroid should never be given without a careful examination and the care and attention of the physician during the treatment?

A. Hyperthyroidism?

Q. Yes.

A. Very much so; they should be under constant observation.

Q. Assuming, Doctor, that you found upon examination of one of your patients that his heart was afflicted with what is known as myocarditis, would you prescribe desiccated thyroid in a case of that kind?

A. Myocarditis?

Q. Yes.

A. Depending upon the cause of the myocarditis. If it was of rheumatic origin, I would not prescribe it. If it is due to fatty infiltration in an obese patient, small doses of thyroid would be very beneficial to that patient because it would aid in absorbing those little fatty particles that have infiltrated between the muscle fibre.

Q. It would take a skilled physician, wouldn't it, to discriminate between those two types?

A. No, not a skilled physician. I would just say an ordinary practitioner.

Q. But the layman couldn't tell, himself?

A. No, you would not be able to tell the difference between rheumatic myocarditis and myocarditis due to fatty infiltration, no, you would not be able to tell.

Q. Now, if the heart muscles were sick or impaired, you would not prescribe thyroid, would you?

A. No.

Q. Assuming you found a case of kidney trouble, would you prescribe desiccated thyroid in that case?

A. Yes, there would be no contraindication for it, because the thyroid has no effect on the kidney except that it is eliminated like all medicines through the kidney.

Q. You examine the urine, do you not, of your obese patients?

A. Not necessarily. We are not worried about nephritis, and they are very seldom diabetic, if they are obese, if they reduce.

Q. But there are obese, aren't there obese people who are diabetic?

A. Occasionally, yes.

Q. Do you use Marmola in the treatment of any of your obese patients?

A. The drug itself, prescribe Marmola?

Q. Yes.

A. I have never prescribed Marmola, myself, no.

Q. You have never seen it prescribed and you yourself watch its action, have you?

A. No, I don't know anything about its action. I have never tried it on myself, and that is where I would try it first, but I see no objection, why I would not.



Q. You spoke about two laxatives being in the formula, I believe, in your testimony.

A. Yes.

Q. Do you know anything about a third laxative, Dilaxine, do you know anything about that?

A. No, I don't know anything about that.

Q. Do you know anything about its therapeutic value or effect?

A. If I knew what was in it, I could tell what it is—what its effect would be, what the therapeutic value would be.

Q. Now, Doctor, in such cases as myxedema and cretinism, the taking of thyroid would not be injurious?

A. I didn't get it.

Q. I say, in a case of myxedema or cretinism, the taking of thyroid would not be injurious?

A. It would help a great deal,

Q. Do you maintain that thyroid stimulates the thyroid gland?

A. That is correct.

Q. The thyroid gland in myxedema and cretinism is either destroyed or inactive, isn't it?

A. It is absent a good many times.

Q. There would be no stimulation of the gland in that case?

A. We would give sufficiently large doses, far more than Young's Rule would permit you to, to get the proper thyroid.

Q. In that instance, it would simply consume or burn up the food, wouldn't it?

A. No, it stimulates. A cretin is an individual who has absence or lack of function of his thyroid gland. He is a dwarf; he has short, chubby fingers. He is mental-

ly inactive. He does not answer coherently; as a rule he assumes an idiotic facies. The disease is usually noted in an individual when he is quite young and we give large doses of thyroid even to those young people.

Q. And the same is true of a person afflicted with myxedema?

A. Yes, we give lots of thyroid to them. Myxedema is brought on many times by removing all of the thyroid gland suddenly, and it must be replaced by thyroid extract or desiccated thyroid.

By Examiner Norwood:

Q. In those cases, then, the thyroid you give the patient acts merely as a substitute for what the gland would secrete if it were active, is that right?

A. That's right; it is as near as we possibly know to give them.

Q. And in other cases, the thyroid you give them substitutes in power and also stimulating the thyroid gland, is that right?

A. That's right. Primarily, the extract of thyroid was made with the same intention as Insulin for diabetes. They thought when insulin was first brought out, that it was a cure for diabetes, and they thought desiccated thyroid was going to cure all the hypothyroids. It is not a cure-all. They thought, the research people did, primarily, that it would give all these glands a rest along with the stimulation and would act strictly as a biologic or part of the body, but that did not occur, and the only way we can hope to get thyroid action is by constantly giving it to people who need it.

Q. But in some case the gland is relieved by giving the body the supply, doesn't it give the gland a chance to get well?

A. Yes. I have diabetics, for instance, that have been on Insulin for a year. We have the same thing in diet, in reducing. I take, not every day—occasionally, I miss; in my diet, and I don't vary more than three pounds. I go down to 207, and the next morning perhaps to 209, and up to 211, with a very moderate degree of exercise.

Q. A diabetic never gets well, does he; the glands are never restored?

A. Well, we cannot say, but when we have normal blood chemistry and sugar absent in the urine, we believe the diabetic is cured, and I have two or three patients that has happened to. And we know people that have taken thyroid and reduced, whether due to the action of the thyroid or whether the patient is careful in selecting his diet and watches his exercise and keeps his general health, but we are not certain, but we do know many times after long thyroid treatment, the patient reduces and does not gain again.

By Mr. Hornibrook:

Q. Have you ever stopped any of your patients from using thyroid?

A. Never had occasion to.

Q. You say, as I understood you, that desiccated thyroid first attacks and consumes the fat tissues?

A. It increases general metabolism, but fat tissue throughout the body is tissue of least resistance, more easily attacked by anything, and, therefore, in reducing it takes the fat off first.

Q. After the fatty tissue is consumed by the use of thyroid, wouldn't the continuous use of it attack and injure the muscular tissue?

A. You mean, take off all the fat off anybody? Take hyperthyroidism, I have operated on them where they have

lost 60 and 80 pounds of weight, and when you cut through the skin, they still have subcutaneous fat.

Q. You maintain it will seek out that fat and not work on muscular tissue until all the fat is gone?

A. Well, from our personal observation, it has been that way. I am not a research man on thyroid, and I wouldn't want to be held down to as fine a point as you ask, but my ordinary common sense and from my personal observation, I would say the fatty tissue is automatically destroyed.

Q. Have you made any clinical study of the working of desiccated thyroid?

A. No, my practice is strictly a private practice and none of my patients are guinea pigs. My hospital is maintained the same way. We have all registered physicians and nurses. They come there to get well and not to be practiced on. That's the reason I have no time to do any research work.

Q. This extract of bladderwrack, that is not in the United States Pharmacopeia.

A. That's right, it is not. It is in the National Formulary.

Q. Isn't it regarded as an obsolete medicine that once was used in the treatment of obesity but is not now generally used?

A. It is a drug that eclectics and homeopaths use a great deal, and it is found, even today, in the homeopathic pharmacies. It is a drug that is a mild stimulant, that has a mild stimulation.

Q. It is not recognized now by the profession generally as a proper treatment or efficacious treatment in the treatment of obesity?

A. The practice of medicine today gets away as much as they can from the use of drugs. However, we have to

use stimulating drugs occasionally, but where a drug is not used as universally as in the past, it is taken from the Pharmacopeia and placed in the Formulary, but it does not mean that the drug hasn't any merit.

Q. May I inquire, what is the National Formulary?

A. Putting it in plain words, it is a record of all drugs ever mentioned that we find in this country and use in this country occasionally.

Q. Whether they are obsolete or not?

A. Well, there are a lot of drugs that I might term obsolete and some doctor might come along and tell you that I am very foolish for not using it; that it is the greatest thing in the world. In fact, I had a doctor tell me that a drug which I never heard of, used for paralysis of the face, will cure apoplexy.

Mr. Hornibrook: That's all.

Examiner Norwood: Any further direct examination?

Mr. Gust: That's all.

Examiner Norwood: That's all. Thank you, Doctor.

(The witness was excused.)

(Discussion outside the record.)

Mr. Michael: Mr. Examiner, I offer, in accordance with my reservation at the last hearing in New York, certified extracts from the pleading filed by the respondent in the Circuit Court of Appeals, which I would like to have designated for identification as Commission's Exhibits Nos. 15 and 16, and I now offer them in evidence.

Mr. Gust: If the court please, he is offering a statement about, and a portion of, respondent's exhibit No. 4, which is in toto. I see no occasion to duplicate it.

Mr. Michael: Because it refers to one specific point.

Examiner Norwood: You want to offer it for a different purpose than what the other was offered.



Mr. Michael: Yes, for an entirely different purpose.

Examiner Norwood: You have separate copies for the convenience of the Examiner.

Mr. Michael: For anybody who examines the record.

Examiner Norwood: It might be convenient.

Mr. Michael: Another thing, there is a separate question involved as to the raising of the question about res judicata and whether it is a part of the transcript of the testimony. Now, I want this to be part of the transcript of the testimony outside of that question involved there.

Examiner Norwood: You want to offer that generally.

Mr. Michael: I want to offer it generally.

Examiner Norwood: As an admission of the respondent.

Mr. Michael: Yes.

Examiner Norwood: With respect to things which happened subsequent to April 17, 1929?

Mr. Michael: That is correct.

Mr. Gust: Well, I object to it, if the court please, because if he is going to have it at all, I think he ought to have an entire pleading. It is already in evidence, and if he wants to use it for any other purpose than the purpose for which I offered it, I have no objection, but it is already here in toto and I object to taking part of it out and offering part of it.

Examiner Norwood: Well, as long as it is in, there can be no serious objection to it being marked as an exhibit.

Mr. Hornibrook: As a matter of convenience.

Examiner Norwood: Yes. I will receive the papers in evidence generally. The one marked "Excerpt from the answer of the petitioner to paragraphs 'G' and 'H' of respondent's answer in nature of cross-bill," consisting of three pages attached, will be received as ~~Commission's~~

Exhibit No. 15, and the other paper, consisting of two pages, marked "Excerpt from Exhibit 1-A," is received as Commission's Exhibit No. 16.

(The papers referred to were marked Commission's Exhibits 15 and 16, and received in evidence.)

Mr. Michael: Now, Mr. Examiner, I have here a typewritten copy of the entire booklet of the respondent, used at some time or other in the package of Marmola, which was referred to by Mr. Hayes in his testimony here at a previous hearing, and which contained a sentence, "We feel a responsibility to those who buy Marmola and wish them to know all the facts about our company."

I would like to offer this copy of that booklet in evidence generally, unless the respondent has in its possession one of the booklets in lieu of the typewritten copy which I have. Mr. Hayes agreed to try to find one. At the hearing in New York he did not have one with him.

Is there any objection, Mr. Gust?

Mr. Gust: Where is the one that the typewritten copy was made from?

Mr. Michael: It is in the pleading of the respondent filed in the Circuit Court of Appeals.

Mr. Gust: Then it is already in evidence.

Mr. Michael: For the purpose of your jurisdictional question.

Mr. Gust: I object to it.

Examiner Norwood: You can offer certain paragraphs or certain pages, or anything else of respondent's exhibits 1, 2, 3 or 4.

Mr. Michael: But it is not separate.

Examiner Norwood: I know, but it can be filed in evidence generally. That could have been done with the other, but inasmuch as they have set this copy out and

respondent himself identified it as a copy, I should think it would be more convincing.

Mr. Michael: Except that it is a question whether it goes in generally for evidenciary purposes.

Examiner Norwood: We will make the record how it goes in.

Mr. Michael: I would rather have the booklet itself, if Mr. Hayes has one.

Examiner Norwood: Well, find it in one of the exhibits.

Mr. Michael: May we do this: Postpone further action on it until we get to Detroit to see whether Mr. Hayes has a separate copy.

Examiner Norwood: All right.

Mr. Gust: All right.

Examiner Norwood: Anything further?

(Discussion outside the record.)

Mr. Michael: Mr. Examiner, I offer samples of respondent's advertising numbered from 1 to 26, inclusive. Now, Mr. Gust has checked these up and there should be a statement in regard to each one as to at least the approximate date of publication.

Examiner Norwood: Is it agreed that they all run within the dates covered by this suit?

Mr. Michael: Yes.

Mr. Gust: All right.

Examiner Norwood: Subsequent to April 17, 1929.

Mr. Gust: All right. I will agree to that, if you say it is so.

Mr. Michael: Yes.

Mr. Gust: All right, I will agree to that.

Examiner Norwood: The advertisements proffered here, consisting of 26 advertisements, are received in evidence as Commission's Exhibits Nos. 17 to 42, inclusive.

(The advertisements referred to were marked Commission's Exhibits Nos. 17 to 42, inclusive, and received in evidence.)

Mr. Gust: It is stipulated and agreed between counsel, that with respect to Exhibit No. 22, this advertising copy was prepared by Messrs. Ruth, Roth & Ryan, advertising agents, and that when it came to the attention of Mr. Hayes, he instructed them to discontinue or change it, and that they did change the word "positive" to "remarkable," appearing in the head:

"I know a positive (remarkable) way to reduce fat."

That it appeared in two or three publications before it was noticed by Mr. Hayes, and possibly one or two afterwards, where the publishers made a mistake in the instructions and failed to change the ad as requested.

The only change in the ad was the word "positive" was changed to the word "remarkable," and they have used the revised form, with the word "remarkable" in it, and no other changes.

Examiner Norwood: That is agreed to?

Mr. Michael: Yes, and we stipulate that these ads, Exhibits Nos. 17 to 43, inclusive, were used in various papers and publications throughout the United States, in the years 1932, 1933 and 1934, at various times.

Mr. Gust: I agree to that.

(Discussion outside the record.)

Mr. Gust: Mr. Examiner, at this time I offer to prove by Mr. Floyd Perkins, of Chicago, who is one of the partners of the F. J. Kellogg Company, an alleged competitor of Marmola, that he is in the advertising business, among his other activities, and also an active partner in the Kellogg Company, and that he is familiar with the advertising of the Raladam Company in connection with

the sale of Marmola, and that he does not regard the Marmola advertising as injurious in any way to the Kellogg Company.

Mr. Michael: Mr. Examiner, counsel for the Commission will object to the witness stating a conclusion as to whether or not his company was injured by the advertising of the Marmola Company, but would not object to a statement of any facts in regard to such competition from which the Commission might draw a conclusion in that regard.

Examiner Norwood: I understand the proffer is merely for a conclusion, and I shall reject that as inadmissible.

Mr. Gust: I make the same offer as to any other alleged competitor.

Mr. Michael: I object to a general offer of that kind.

Examiner Norwood: Yes, you will have to designate that.

Mr. Gust: All right, that is all I want to prove in Chicago.

Examiner Norwood: And you will have a hearing day after tomorrow in Detroit?

Mr. Gust: Yes, I have an expert witness there, and Mr. Hayes will be there, if you want Mr. Hayes for anything.

Examiner Norwood: Pursuant to the statement of counsel and agreement, the hearing is now adjourned to reconvene in Detroit, Michigan, Room 921, Federal Building, at 10 o'clock, a. m., Eastern standard time, March 12, 1936.

(Whereupon, at 4 o'clock, p. m., March 10, 1936, the hearing in the above-entitled matter was adjourned to 10 o'clock, a. m., March 12, 1936, Eastern Standard Time, Room 921, Federal Building, Detroit, Michigan.)



## PROCEEDINGS

(Continued March 12, 1936)

Examiner Norwood: The hearing will come to order. Pursuant to adjournment at Chicago, Ill., on the 10th day of March, the hearing in this case is now convened in the City of Detroit, Mich., in Room 921, Federal Building, at 10 o'clock a. m., March 12, 1936.

Mr. E. J. Hornibrook and H. D. Michael, appearing for the complainant; Mr. Rockwell T. Gust appears for the Respondent.

DR. SAMUEL F. HAVERSTOCK was thereupon called as a witness for the Respondent, and, having first been duly sworn, testified as follows:

## \* Direct Examination

By Mr. Gust:

Q. Where do you live, Doctor?

A. I live in the City of Detroit.

Mr. Hornibrook: What is his name, please?

By Mr. Gust:

Q. Give us your full name.

A. Samuel F. Haverstock, H-a-v-e-r-s-t-o-c-k.

Q. What is your business or profession?

A. I am a Doctor of Medicine.

Q. Are you licensed to practice medicine in the State of Michigan?

A. I am.

Q. When did you become licensed?

A. In 1909.

Q. Have you practiced continuously since that time?

A. In the City of Detroit, yes.

Q. Will you tell us briefly your educational experience, educational qualifications, and your experience? What school did you graduate from?

A. I graduated from the Detroit College of Medicine in 1909, served internship at St. Mary's Hospital.

Q. In the City of Detroit?

A. City of Detroit.

Q. Then did you go into private practice of medicine?

A. I did.

Q. Have you had any hospital connections during your practice?

A. I have been connected with a number of hospitals, held the position of surgeon at Lincoln Hospital.

Q. Is that in the City of Detroit?

A. That is in the City of Detroit.

Q. Are you connected with that hospital now?

A. I am.

Q. Doctor, do you specialize, or have you specialized in any particular branch of medicine?

A. I started out and my training was that of a surgeon, and since that time, beginning in 1912, I took up the study of endocrinology.

Q. Do you treat obesity, Doctor?

A. I do.

Q. For how many years have you treated obesity?

A. My first work began in 1912.

Q. Have you treated it continuously ever since?

A. Yes, sir.

Q. About how many obese patients have you treated during your entire practice?

A. That is a pretty hard question to answer.

Q. Just approximately.

A. I should say five thousand.

Q. About how many obese patients do you have now under your care whom you treat either regularly or intermittently?

A. Well, of the obesity cases as such, I have about sixty or seventy cases in direct treatment just for obesity, and I have in addition to that about a hundred cases of surgical myxedema that I take care of all the time.

Q. Doctor, are you familiar with the glandular product known as desiccated thyroid?

A. I am.

Q. For how many years have you been familiar with that?

A. Well, I have been familiar with thyroid and desiccated thyroid since 1912.

Q. Do you use it in your practice?

A. I use it all the time.

Q. How long have you been using it in your practice?

A. Well, it was some time about 1912 I began to use a desiccated thyroid.

Q. What do you use it for?

A. I use it entirely for the treatment of hypothyroidism.

Q. Doctor, what is the effect of desiccated thyroid when taken ordinarily by a human being?

A. The effect of the desiccated thyroid is to produce a result, an increase in metabolic process, the same as an internal secretion of the thyroid of the patient himself.

Q. Do you use it in the treatment of obesity?

A. I do.

Q. What have you found, Doctor, as to the number of people, obese people, who come to you for treatment, who are hypothyroids?

A. The cases that I see of obesity are 99 percent hypothyroid by the metabolic testing machine.

Q. You have a metabolic testing machine?

A. Yes.

Q. How long have you had it?

A. Oh, ten or twelve years; I don't know just exactly.

Q. Before that time, did you use thyroid?

A. Yes.

Q. Did you give it to obese people without making any metabolic tests?

A. Well, before I owned the machine I had hired laboratories to do testing on cases that appeared to me to require a more careful examination.

Q. About what percentage of the cases was that?

A. Well, again, that is a pretty hard thing to say, but probably one case in five, maybe 20 percent, maybe 10 percent. It was a thing that gradually grew up. It is my understanding metabolism increases—it was part of the examination, and it was a gradual growth, the same as the use of thyroid substance matter.

Q. Doctor, what dosage of thyroid substance do you use to start your patients, your obese patients on?

A. The use of thyroid, of course, is a good deal like your general information. It was started years ago with a grain dose. Now, it has gotten to the place where I give practically every fat patient that I treat six grains to start with.

Q. You mean to say six grains a day?

A. Six grains a day.

Q. What size doses do you give them?

A. As a rule, I give that in two tablets, or in three tablets, and the absorption of thyroid is such that it can be given at once, or it can be given in divided doses during the day.

Q. Your practice is to give it either in two or three doses?

A. As a rule, yes.

Q. And six grains is your initial starting dose for obesity?

A. That is right.

Q. About how much of this thyroid substance have you used, Doctor, in your life?

A. Well, that is a pretty hard question to answer. I use—I buy and dispense about a half a million grains a year, or very close to it.

Q. You dispense it yourself, do you?

A. Yes.

Q. You don't write a prescription to the drug store and ask your patient to have it filled?

A. No, I buy the thyroid made up in a tablet and dispense the tablets according to what I think the patient needs.

Q. What size tablets do you regularly dispense?

A. I have tablets two grains of thyroid, two grains and a half, five grains, and ten grains.

Q. You use one of those tablets, or more, as conditions seem to you to warrant?

A. As a daily dose.

Q. As a daily dose. Do you use laxatives in some of these tablets?

A. Yes, I have two tablets that I keep on hand that have laxatives.

Q. What laxatives do you have in them?

A. I use cascara and phenolphthalein.

Q. What size dosage of cascara?

A. Well, that is made variable in the different tablets. I use a quarter of a grain, as a rule, of the extract, and with phenolphthalein, I use a sixth of a grain in one tablet,



and I use a larger dose in another tablet. I have the different tablets made up so that I don't have to write prescriptions and can dispense it.

Q. Do you find, Doctor, that thyroid is indicated in practically all obesity that you see?

A. Yes.

Q. Do you give it to all of your obese patients who come to you for treatment?

A. Yes.

Q. Doctor, have you made any experiments on animals to determine something about how large a dose you can give an animal safely?

A. Yes, I have experimented on dogs.

Q. How large a dose have you given to a dog?

A. I have given a hundred grains of desiccated thyroid to a dog weighing 12, 14 pounds, and I have given as large as a hundred fresh sheep thyroids to a dog at one time.

Q. Did these dogs suffer any harm from those dosages?

A. Not so far as I was able to determine.

By Examiner Norwood:

Q. Did it make any change in them at all; did you notice? Did you examine them for symptoms?

A. You want the information?

Q. Yes, sir.

A. The first dog that I used fresh thyroids on was a beagle. He was my hunting dog, and he would hunt for half an hour and fall down, had to go get him, put him in the car and take him home.

Q. That was prior to taking the thyroid?

A. Yes. And owing to the fact that my knowledge of desiccated thyroid at that time was small, I obtained fresh thyroids from the slaughter house. I gave the dog two fresh thyroids feeling that that certainly should be enough, and I put the rest of the fresh thyroids up in

the building expecting to give him thyroid right along, and during the night it fell down, and he ate the one hundred.

Q. Did you notice whether his heart action was higher?

A. Heart action. The dog didn't seem to be any different except that he was pretty lively the next morning, and a week later he ran all day from me, and two months later he won the championship over in Canada.

Q. You think he was falling down, then, because he was overweight?

A. No, the dog wasn't very much overweight, but he had a goiter and I think that he fell down in his running because of his hypothyroidism, and I certainly didn't intend to give him a hundred grains at that time, although later I gave a hundred grains of desiccated thyroid, to a number of dogs that I obtained from the pound in order to find out if I could poison them.

Q. You spoke of absorption being slow in this thing. Do you suppose that the dog absorbed all of this 100 grains?

A. There isn't any doubt about it in my opinion. The dog woke up where before he was sleepy and drowsy, and he seemed to lack the tone to run as a beagle should after rabbits. This dog was a pedigreed dog, and I got him from a man in Canada, and I was very much disappointed in him when I took him out to run.

By Mr. Gust:

Q. Doctor in your opinion, is desiccated thyroid ever toxic?

A. Well, before we answer that question, toxicity has to be defined.

Q. How do you define it?

A. My understanding of toxicity is simply stated: Poisonous.

Q. Does thyroid ever become toxic under that definition?

A. Well, that—normal thyroid, or desiccated thyroid is not toxic.

Q. Is that in your opinion because it is a normal constituent of the human body that is present in all human beings, or, at least, all normal human beings?

A. Yes.

Q. Doctor, you say you start your obese patients on six grains a day. Did you ever observe any harmful effects from that medication, the six grains a day in an obese person?

A. Not with six grains.

Q. Over what periods have you given six grains a day to an obese person?

A. Well, the usual practice is to give six grains a day until you get the full physiological action, and then if it is not sufficient the tendency is to increase—the practice is to increase the dose, so that as a rule I give six grains for a week or two weeks, as a rule.

Q. Then as a rule do you give a larger dose?

A. Yes, as a rule the dose increases.

Q. Have you had patients that you continued on the six-grain dosage?

A. Six to eight grain dosage will reduce some patients; they never have to take any more.

Q. Over how long a period of time have you given that six to eight grain dosage?

A. Oh, a year.

Q. Have you ever observed any harmful effects in any of them?

A. Not with six grains.

Q. How high a dosage have you given at times to a human being?

A. Humans, thirty grains. I think thirty grains is about the maximum dosage, as I remember it, a day.

Q. Doctor, in recent years have you given practically all your obese persons metabolic tests when they first come to the office?

A. I have given practically every person a metabolic test in the last seven or eight years.

Q. Before that time did you do it?

A. Not so frequently; occasionally.

Q. Do you regard it as essential and necessary to give a metabolic test before you give thyroid in small doses?

A. No, sir.

Q. Have you found that practically all obese people; or all of them, for that matter, can take two grains of thyroid a day without harm?

A. That is right.

Q. Doctor, do you give diets in connection with your treatments?

A. The diet today is only the cutting down of a total intake at one time. I went into the question of diet very carefully. I had printed about thirty different types of diets, and I used these different—I used the different diets according to the type of obesity and according to the need of the patient, in so far as I was able to determine it. As time went on, and I became, as I thought, more proficient in the treatment of obesity, I finally discarded all diet lists, and today, and for the last five or six years, or perhaps a little longer, I haven't had a diet list in my office.

Q. You simply advise a patient to cut down on the total intake; is that it?

A. In certain cases, yes.

Q. Doctor, did you ever have any obese patient come to you who was suffering from any bodily ill which you

thought would prohibit the taking of as little as two grains of thyroid per day?

A. No, sir.

Q. As I understand it, Doctor, you treat all obesity with thyroid; is that right?

A. Thyroid in the treatment.

Q. And you might in a special case combine it with some other glandular substance such as ovarium or pituitary?

A. That is right.

Q. But your standard tablets, of which you use millions, contains simply thyroid or thyroid and a laxative; is that right?

A. They are combined tablets. They all contain thyroid and different things, according to the different tablets that are used.

Q. Doctor, have you examined the formula for Marmola?

A. I have.

Q. Are you familiar with the therapeutic properties of thyroid and cascara?

A. I am.

Q. Doctor, in your opinion, can the average or usual or ordinary obese person take Marmola tablets for a period of sixty to ninety days under the instructions, directions, and advice contained on the package and in the booklet, and without medical supervision, and without harm?

A. They can.

Q. Do you think, Doctor, that formula would be in any way harmful to the average, ordinary, obese person taking that?

A. No.

Q. That way?

A. No.



Q. Do you think, Doctor, that, in your opinion, it is necessary for any obese person to go to a doctor to be examined before he takes two grains of thyroid a day?

A. I don't think it is necessary.

Q. Now, Doctor, I take it in pushing the drug to its physiological limit in giving as high as thirty grains a day, you have had patients who exhibited some symptoms, have you?

A. That is what we are after.

Q. What symptoms are exhibited by obese people who take large doses of thyroid, ten or fifteen or thirty grains a day?

A. The first symptom that develops is a weakness of the knees. They get the full physiological action of thyroid or just a trifle beyond the physiological dose, a weakness in the knees keeps them from getting into a car, a street car, from going up or down stairs, and it is quite a pronounced symptom; then in addition to that, they develop a certain amount of sweatiness, and they develop a tremor, but the first symptom they get before the tremor or the sweatiness, is a tendency to weak knees, or weakness in the knees.

Q. Doctor, in that event, have you found that that symptom was in many cases transitory, and they got over it in a few days?

A. That depends on whether the drug is taken away or not. If it is taken away in two, three, four, five days, the patient is all right.

Q. Have you observed that that patient had any permanent harm or injury because of that situation?

A. I have never observed that.

Q. Have you ever observed any such symptoms as that from as little as two grains of thyroid per day in an obese person?

A. No, it doesn't happen.

By Examiner Norwood:

Q. Well, have you kept these people who had overdoses under observation to observe those symptoms?

A. You have to keep them under observation. They holler so you have got to go and look at them.

By Mr. Gust:

Q. Are they disagreeable symptoms?

A. Very.

Q. Has it been your experience that they immediately discontinue the medicine?

A. Yes, they discontinue it and holler for me.

Q. You cut down the dosage of thyroid?

A. I stop it.

Q. You stop it?

A. They stop it.

Q. They stop it?

A. I O. K. the stoppage.

Q. Doctor, have you had occasion to observe the effect on the general health and the condition of the patient you treat with thyroid medication?

A. I have.

Q. What is the general effect on their health?

A. Thyroid substance is used by me in a great many cases that are not very much obese. I use it in certain conditions as heart conditions and kidney conditions, where there is a very small percentage of hypothyroidism, and the result is to increase their tonicity, their general well being.

Q. Do you find, Doctor, that it acts as a diuretic?

A. It acts as a diuretic, and it also acts as a heart stimulant.

Q. The obese people who are treated with thyroid medication, do they generally feel very much better?

A. They all feel better.

Q. What reports do they give you about how they feel?

A. The report that they make to me is my advertisement. They come in and say they feel so much better they can do more work, they can stand it to stay up nights, which they could not before. And it is that sort of thing that makes it possible for me to take care of obesity. It is their well being. The patient invariably comes in and says they feel better.

Q. Has your practice largely been built up by the obese people whom you have treated sending their friends and other people?

A. It has been built up entirely by that method.

Q. Doctor, is it your experience that thyroid medication has any effect on the blood pressure?

A. It has.

Q. What effect does it have?

A. It lowers blood pressure if there is enough given to correct a hypothyroidism.

Q. It has a tendency to lower blood pressure; does it?

A. I am under the impression that it always lowers blood pressure.

Q. Doctor, have you had occasion to treat and operate on toxic goiters?

A. I have.

Q. Have you treated Graves' disease and Basedow's disease?

A. Yes, sir.

Q. Is Graves' disease the same thing as hypothyroidism?

A. No; there is a distinct difference between Graves' disease, as I understand it, and I think that that is the general medical understanding, from ordinary hyperthyroidism, or the common ordinary types of goiter.

Q. Is one of the symptoms of Graves' disease exophthalmia?

A. Yes.

Q. Have you ever observed any exophthalmia produced by thyroid medication in any amount?

A. Never.

Q. Doctor, have you ever found in your obese patients who have developed these disagreeable symptoms to have suffered any permanent heart damage or kidney damage or liver damage from it?

A. I never have.

Q. Or any other permanent damage to the organs of the body?

A. I have never observed it.

Examiner Norwood: Well, did you ever have any patients come to you who had been previously taking this thyroid on their own?

The Witness: Yes, I have. Yes, I have. Many occasions they come in fear and trembling and tell me they have taken one grain and they haven't got anywhere, and they want my treatment.

Examiner Norwood: Have you ever noticed any injury in those cases?

The Witness: They don't take enough. There is no possibility of injury. I take those same cases and start them off with six grains and run them up to ten, twelve, fourteen grains, and they immediately begin to lose. They didn't take enough to do them any good whatsoever. There was so much hypo that it wouldn't correct the condition.

By Mr. Gust:

Q. Doctor, is it your experience that thyroid medication tends to stimulate the appetite so the patient eats more and thereby—

A. The question of appetite. When the patient first takes thyroid, generally from three to six days, their appetite will be somewhat increased, they begin to take more interest in food almost immediately, and as the thyroid gets in its physiological action, increases the burning of food or metabolism, the patient is satisfied and the appetite runs down. Now, that is almost a universal finding.

Q. So that after a few days they have no trouble in following your directions to cut down on their diet?

A. There is occasionally an exceptional patient, that it does not make much difference what you do. That patient has developed and it can't be changed in appetite, and it seems as if no amount of treatment or medication or any thing else will change that patient's appetite; but as a rule they run down and say they are satisfied with much less food, and the patient that has been under care for six months nearly always tells me they get along on less than half of the food that they ate before.

Q. They get along without difficulty? That is, they don't have a desire for any more food?

A. The appetite is gone when the metabolic process supplies them with heat and energy.

Q. Doctor, has it been your experience that a great many of these obese people whom you have reduced through thyroid medication, that they don't regain their weight when they stop the medication?

A. I have a great many patients that I haven't seen for years that I treated, and only meet them incidentally, not as patients, that have been off of treatment for as much as eight or ten years and haven't had any treatment since.

Q. Have they regained their old fatness back?

A. They never regained their weight, but they increase—it is a common thing for them to increase after they leave off treatment about five or six pounds.



Q. And then remain at that point?

A. They remain at that weight. They increase in weight almost invariably when they come off. If you care, I will tell you how we do. When the patient has lost, say, down to what I think is about the normal weight, then the treatment is tapered off until they get down to approximately two grains or maybe three grains a day, and then the patient is supplied with those two grain tablets and told that if their weight goes above five pounds from what it is, then they ought to start taking these tablets again, and occasionally I have an old patient write in and want some more of those brown tablets that I gave him.

Examiner Norwood: You give him a scale of dosage when he begins again; do you or not?

The Witness: When he begins again, almost invariably these patients only take the two-grain tablets. They take the two-grain tablet with about a sixth of a grain of phenolphthalein in it, and then I have a two and a half grain that carries cascara and phenolphthalein, both. It is a rather, quite a good laxative tablet along with the thyroid.

Examiner Norwood: I mean, when they gain the five pounds and begin again, do they start on as large a dosage?

The Witness: Don't need near as large a dosage because you don't have to do any reducing.

Examiner Norwood: That is always your instructions, is it?

The Witness: That is the instructions, and give them two two-grain tablets at the maximum, and as a rule one tablet is enough to hold them intermittently. It is not given right along.

By Mr. Gust:

Q. I believe you said that there was quite a number

of them that required no medication at all to remain stationary?

A. It is rather an exception for them to write in or come in for medicine. It happens, of course, because those are the ones we know about.

Q. Doctor, while you are treating these obese patients, have some of them become pregnant?

A. Yes.

Q. Women?

A. Naturally.

Q. Yes. Do you discontinue thyroid medication when a woman, when an obese woman, becomes pregnant?

A. No; it is an almost standard rule for me to give the pregnant woman, if she is inclined to be stout, keep her on thyroid until the baby is born, because it eases up the mechanical problem of delivery. I used to get a good deal of confinement work, and now I have about sixty patients that thought their baby days were over, and a good many of them regretted it; and I have got about sixty babies now amongst these so-called fat patients of mine. They have made very much friendship for me because these babies did come. They thought their days for babies was over with, and when they got reduced and on thyroid they got pregnant.

Q. Do you think, Doctor, in your opinion, that two grains of thyroid per day will hurt any obese, pregnant woman?

A. Well, it would be a God-send to all of them if they could have it.

Q. Doctor, has it been your experience, or is it your opinion, that thyroid medication causes any oxidation or burning of the active muscle tissues of the body?

A. I don't think so. I think that the fat is used up long before there is any muscular oxidation.

Mr. Gust: I think that is all.

Examiner Norwood: We will take a five-minute recess.  
(There was a short recess taken. )

### Cross Examination

By Mr. Michael:

Q. Doctor, is obesity a disease?

A. Obesity is a symptom.

Q. Your opinion is that it is a symptom of disease?

A. It is not a symptom of disease.

Q. What is it a symptom of?

A. It is a symptom of a lack of a substance in the body that is needed.

Q. What is that substance?

A. Thyroid, in most cases; maybe something else, but as a rule thyroid influences it.

Q. In any of the cases that you have treated for obesity, have you found any cases where there was not present hypothyroidism?

A. There is occasionally a case in which the basal is normal in a patient, and that is as far as I can state. I feel that they are all hypothyroids, but I can't prove it in all of these cases.

Q. Is that the general consensus of medical opinion?

A. Well, I couldn't say as to that.

Q. You are just speaking in that regard from your own experience?

A. I am talking entirely from my own experience.

Q. In other words, your opinion is that practically all obese patients are suffering from hypothyroidism?

A. That is right.

Q. You read the literature, I assume, from the nature

of your practice, endocrinology and treatment of obesity; do you not?

A. I don't believe that I have read very many articles on the treatment of obesity. I have read the "Endocrine" from time to time.

Q. Well, you are familiar with the subject of obesity as is treated in connection with various medical subjects.

A. Yes, sir.

Q. I wish you would state some outstanding authority who shares your opinion that practically all obese patients are suffering from hypothyroidism?

A. I can't quote an authority, I don't believe. My original work came from Ettingbock, of St. Louis.

Q. Do you know of authorities who hold the contrary view?

A. Well, that is going off into the field of—I can't say that I do.

Q. Have you ever seen the literature, or do you know of any authorities who hold the view that the great majority of obese patients are suffering from too much intake of food?

A. I know of only one authority that has come out broadcast and flatfooted for that statement.

Q. Did you ever see any statistics in the literature of the subject that attempted to give the percentage of cases of obesity due to overeating and those that are due to other causes?

A. I spent two days at the University of Michigan, and at the University of Michigan every case was considered to be a case of overeating, and all of the statistics at that place tended to show that there was no medical reason for the treatment of obesity. Dr. Newburg is the authority at the University of Michigan, and he is attempting to prove, and has written many articles and many pamphlets

on the subject of obesity. He is the only authority that I have taken the trouble to check on.

Q. He holds that theory?

A. He holds that theory, Dr. Newburg at the University of Michigan.

Q. What is his position at the University of Michigan?

A. He is head of the Department of Endocrinology. I think—I know that he is in charge of that Department in the basement of the University Hospital.

Q. Doctor, if you found a patient who, so far as you could tell by all your examinations and tests, was not suffering from hypothyroidism but was obese, would you give treatment by use of desiccated thyroid?

A. I have every case that I have seen.

Q. You say you don't see that kind of case.

A. I said that it was—down to one percent, that I don't—couldn't demonstrate.

Q. Suppose that you couldn't demonstrate it, that it was not due to hypothyroidism, would you give desiccated thyroid?

A. I would give a thyroid.

Q. Even in the face of the fact that the patient's thyroid was functioning normally and was secreting enough of the secretion to take care of its bodily needs, and to carry on normal metabolism?

A. We are going out into the realm of speculation when you build a case of that kind; because as yet our tests for the normal activity of the thyroid are, I think, admitted by all doctors to be very crude yet.

Q. Well—

A. The basal-metabolism machine is not the last word in the determination of how efficient a thyroid is.

Q. Supposing a hypothetical case, now, what do you do?



A. I would give them thyroid, and I quarreled with Dr. Newburg for two days over that thing.

Q. In such a case the patient under the dosage of desiccated thyroid you would be giving would have a case of hyperthyroidism?

A. All cases—

Q. Wouldn't he?

A. All cases that I treat develop a hyperthyroidism.

Q. It would eventually in that case, if you assume that the person's normal secretion is sufficient.

A. That is right. That is right.

Q. He might be suffering from a condition known as hyperthyroidism, wouldn't he?

A. Correct.

Q. Would that be deleterious?

A. Not at all.

Q. When you find a patient suffering from hyperthyroidism, what do you do for such a patient?

A. When we find that patient, we try to determine, if possible, what the cause is.

Q. You don't give him the thyroid then?

A. Well, it depends on whether he is fat or not. As a rule, when you get hyperthyroidism, that is not treated, you find a thin person, and the basis for our treatment is because of the observation that in that type of case they are thin.

Q. When do you call a patient obese, Doctor?

A. I feel that a patient is obese when they run about 25 percent over the average weight for that person's age and height and general condition.

Q. In other words, if a person's normal weight, just for the assumption, would be a hundred pounds—

A. That is the average?

Q. Average. And he weighed 125, you would consider him obese?

A. Yes, of course.

Q. Is that the proportion you mean?

A. That is the trouble in trying to make statements of percentages.

Q. Yes.

A. That patient—

Q. Every—

A. I never see a patient like that. There is no one comes to me that weighs 125 pounds. My patients weigh 250 and 300 pounds.

Q. Taking it for comparison.

A. If you will take 150 and make that patient 200, then she is obese.

Q. Suppose that a person by their measurements, and so on, would indicate that they should weigh 150 pounds, and suppose they were actually weighing 160 pounds.

A. Yes.

Q. Would you call that person obese?

A. Well, still again there are factors. As a rule, no. And I very seldom see the patient that is only a few pounds over the average weight for her age and condition.

Q. Doctor, in your practice, have you come in contact with and treated persons who merely wanted to reduce a few pounds?

A. I have seen those patients, but as a rule I don't bother with them.

Q. But you know that they exist?

A. Yes, I see them every once in a while.

Q. You know they exist in large numbers?

A. Well, perhaps, yes.

Q. Do you consider it advisable for such persons who are not obese from your standpoint, that they should go

about using self-medication in order to lose some pound-age?

A. As a doctor, I am against all self-medication. I think everybody should go to a doctor.

Q. Do you think a person whose weight should be 150 and who weighs 160 is enough overweight to show any abnormal or diseased condition?

A. Well, of course, then you get back into the question of the individual. I should say that if there was even ten or fifteen pounds overweight, a little thyroid probably wouldn't do them any harm.

Q. I am not asking you that. You think they are in such a condition that that would indicate that they have any diseased condition, or, rather, that they merely are sluggish in their habits of exercise and careless about their habits of eating?

A. It may be so.

Q. That is probably so, isn't it?

A. No, I wouldn't say that.

Q. It would be in most cases?

A. No, I don't think that is true.

Q. Do you say that you would consider a person would have to be 25 per cent overweight to consider them really obese?

A. Before I put them through the expense and the bother of checking that patient over, they have to carry a definite indication of overweight, and when I say 25 percent, I am only just estimating, because my reaction as I see that patient means so much. I have treated patients that were definitely built up with water, that were only a little overweight, and yet I think that patient should be treated. It is hard to make a rule and say, "Now I do so and so with reference to percentages," because personal contact with that patient means so much.

Q. Would ten pounds of overweight in a person who should weigh 150 pounds indicate to your mind any hypothyroidism?

A. Probably a very small amount.

Q. Wouldn't it more to your mind indicate carelessness in eating and exercise?

A. Oh, I don't think so; it might in certain cases. I occasionally see a case that I think an influence of eating is quite a large factor, but not in very many cases.

Q. Tell me this, Doctor: I want to get your opinion about it.

A. Yes, sir.

Q. If you would find a case that is slightly overweight, and after all of these examinations and tests you had made you were satisfied in your own mind it was due to carelessness in eating habits and in their lack of exercise, would you in such a case correct the bad habits that have been going on, or would you treat it by medication?

A. Are you talking about what I would do now?

Q. Yes.

A. That patient is now put on a small dose of thyroid and the instruction is given—when I say small dose, I mean four grains—to me four grains of thyroid substance to a patient who is overweight, if it is only five pounds, is not going to do any harm, and is a small dose. The time was when the patient that ran a normal basal, that was 10 pounds overweight, I used to tell them to go home and behave themselves. A number of those cases I saw five or ten years later and they were 40 pounds overweight, so I went to treating them.

Q. Would you give such a patient any instruction as to diet or his habits of life?

A. I tell them all to cut down; every patient, I tell them to watch—

Q. Well, a patient who is 10 pounds overweight who when he is normal weighs 150 and who doesn't show any indication of anything but bad eating habits and lack of exercise, a change in the eating habits and with a proper amount of normal exercise would correct the entire condition, would it not?

A. Correct it, yes.

Q. That is all you would need to do?

A. That is true.

Q. But you need to do something more than that?

A. I do now because of the experience. I have seen these cases years later. They come back to me and I look up their chart and I find out that I had a chance to treat that patient years ago when they were well within pretty normal bounds, and I find that that patient now that did weigh 160 pounds, now weighs 210, consequently, my secretary and I are very close, we have been in the office together for 14 years, and we have talked that matter over a great deal.

Q. That was merely an indication that they didn't follow your dietary directions, wasn't it?

A. Perhaps that is true, but why they didn't follow it is another story.

Q. Why do you give all your patients who are obese a metabolic test?

A. Well, originally, I did it for my own information; now I do it because it has become part of the routine and the patient expects it. Besides that, it helps to increase the doctor's income.

Q. If you entertain the opinion that thyroid should be given in all cases, why is it necessary?

A. It really isn't necessary. I can estimate a patient's metabolism within a few points now, but it has become



routine and my patients feel that I am slighting them if I don't do it.

Q. If you give thyroid to all obese patients, why do you want to know anything about the metabolism?

A. Don't need to know anything about it.

Q. Do you give any other examination than the metabolic test, Doctor?

A. Yes, sir.

Q. Just tell the different things you do.

A. The average routine. The patient comes in, they are instructed to bring in a sample of urine, the patient is put through the metabolic test, and then heart and lungs. The question as to operate is very carefully noted on all our charts. The influence of cooperating procedure is one of the essential forces in trying to reduce from my standpoint. Women who have had operative interference must be found—must be determined as to what their menstruation picture is, and that is to my way of thinking very important. If there is any heart condition, that is gone into; if there is none, it is merely passed over as routine. The kidney examination is made in every one of the cases I see.

Q. Is that all of the details?

A. That is generally the extent of the examination unless there is something to indicate further trouble, and if there is we try to find out what it is.

Q. Why do you have urinalysis?

A. It is merely part of the routine to determine if the patient has any organic kidney difficulty.

Q. What would that have to do with the medication by means of thyroid?

A. It would be an indication for medication. If you find a disease in the heart or in the kidney in a patient that comes to you, it gives you that much more information.

and these patients decide on how successful a doctor is by how good they feel, and if—

Q. If you give thyroid, anyway—

A. Yes.

Q. —in all cases, why would you need to know something that wouldn't help?

A. Thyroid isn't the only treatment for those things. You may have to give alkalis, you may have to give digitalis, you may have to give a lot of things in addition to thyroid, but in all these cases, if they are obese they get some thyroid, and then whatever else they need.

Q. Does thyroid cause an increase of activity of the heart?

A. Yes, sir.

Q. And the heart with lesions, can it stand increased activity?

A. A heart can stand it, sure.

Q. Is it good for it?

A. Well, that depends a good deal on how far it has gone. It depends on what the activity is and how long it is carried out.

Q. Is thyroid good for cases where there is hardening of the arteries?

A. In hardening of the arteries, when there is an increase in blood pressure, and in most cases of hardening of arteries you do have an increase in blood pressure, and the thyroid lessens blood pressure.

Q. How do you explain that, Doctor, if it increases the action of the heart?

A. Thyroid not only increases the action of the heart but it is a detoxicant. It acts like a good deal like kidney elimination. It gets rid—and I am using toxemia in the meaning of poisoning—as soon as that is relieved the cli-

nical observations are that the blood pressure goes down, and the heart is saved a great deal of trouble when the blood pressure goes down. The process is rather complicated. If you want to listen to it I will tell you how I think it works.

Q. All right.

A. In heart and kidney and sclerotic conditions, or hardening of the arteries, they have a slowing down of the physiological process. You have a starving of all of your tissues, not only of the heart and liver and of the kidney, but all over the body. Nature becomes starved. It is water logged, and it is starved, and the impulse that is sent out along the nervous system is for more food. They are starved. The more weight they carry the more water and the more insul the tissue has from waterlogging and toxemia, the more work you throw on the heart and the more work you throw on the kidney and the more work you throw on the body generally. Then the call for another supply of food only adds to your difficulty, to your poisoning, and to your sclerosis. When that case is taken, and it doesn't make any difference whether the patient is 45 years old or 75, when you clear up the poisoning, when you clear up the odemitis situation, and when you detoxicate that patient, that patient immediately begins to get better. Their blood pressure goes down and they feel a great deal better and are better. And, incidentally, in the doses below 10 grains you don't increase the rate of the heart. You detoxicate in the giving of thyroid to that patient, and consequently that patient's load is much less.

Now, that is my theory of what happens when thyroid is given to the patient with myxedema or cretenism, or any of the other symptoms of a lessened thyroid function. It is a load to be carried; it is poisoning; it is material

that needs to be eliminated. And that thing thyroid does.

Q. But your theory is based on the proposition that all or practically all obese persons are suffering from hypothyroidism?

A. That is the theory.

Q. Without that supposition, your theory would fail, would it not?

A. I think so.

Q. Why, Doctor, are you careful to explain that you are using "toxic" in the sense of poisoning?

A. Because I have always had a great trouble in finding anybody to determine what toxicity means.

Q. All right. What have you found to be its usage by others rather than your particular definition?

A. The greatest confusion in the world develops when you ask different men to define "toxicity."

Q. Well, what—

A. One man means one thing, one man means another.

Q. What have you found to be the usage of it by others that is different from your usage to mean poisoning?

A. The one thing that you find whenever there is a hyperadrenal, an increase in the adrenal secretion into the blood, you have a series of symptoms develop which are called toxic. Now, to me, they are not toxic at all, they are a hyperactivity of a physiological function. Now, that isn't toxic in my sense. There isn't any poisoning there, and yet almost every surgeon that you run across will call that a toxic situation. There is a great deal of confusion, and you have to define your term before it means anything.

Q. Using that definition, would you say that thyroid is toxic?

A. Not at all.

Q. I am not talking about your definition, but the other definition.

A. All right. I don't want to use the term in any sense, only poisoning.

Q. But if you use it in the other sense, would you call hyperthyroidism toxic?

A. I will illustrate it, if you wish.

Q. I just want to know whether you would.

A. No.

Q. You wouldn't call it toxic in either sense?

A. No.

Q. The way you use it and the way other doctors use it, the word "toxic"?

A. No; that isn't the question. You asked me—

Q. Well, now, that is what I want to know. Would you call thyroid toxic in the sense that other doctors use the word "toxic"?

A. I think that in the other man's definition, that a large dosage of thyroid would be called toxic.

Q. How often do you see the patients that you are treating by use of thyroid?

A. I see them the first month once a week, and after that I see them twice a month.

Q. Why do you have them come to be observed?

A. Well, I have them come for a number of reasons. My business depends on how well satisfied the patient is; that is, any doctor's business does. If the patient is satisfied you are likely to have more business, and your income increases; you are able to pay Uncle Sam better. If I don't see those patients they finally drift away and I don't see them any more. Consequently, I keep pretty close tab on these patients. They are very well satisfied and they lose weight.



Q. Is this merely a business matter, or do you think it is advisable to see them from a health standpoint?

A. I have no fear of anything happening to these patients. When they go to the seashore, I give them 2 months', six week's medicine, and I don't see them. I have no fear for them.

Q. Do you give them any instructions?

A. I tell them any time they develop any symptoms that are unpleasant to stop the use of their medicine.

Q. Do you tell them what symptoms?

A. As a rule not.

Q. Do you sometimes?

A. If the patient is intelligent, yes.

Q. What do you tell them?

A. I tell them the symptoms of the weakness in the knees is the first symptom they will notice, and the reason that is given is because so many of these patients go away to the seashore. When you get to the seashore you get a diet that is rich in iodine. And we found out by the fact that these patients went to a seashore and got sick, I mean in the sense that they got shaky, weak knees, some headache. Consequently, the patients that go to the seashore cannot take the dosage that they take in this climate, and it is necessary when this patient tells me they are going, we will say, to Florida or to California, or down through Atlantic City later in the year, I tell them "Cut your dose down in two." And as a rule when they do that, we don't have any trouble, but once in a while the patient won't mind, once in a while the patient will go ahead and break your orders, and take all the tablets they get their hands on.

Q. Then what happens?

A. They get weak in the knees and get scared, and then they don't come back any more.

Q. Why don't you just let these patients work out their own salvation?

A. Because I would starve to death. I have to have a business of some kind.

Q. Do you think it is advisable for a patient under treatment of thyroid to just go away and follow his own devices about the dosage?

A. From the doctor's standpoint, I think that would be awful bad policy.

Q. Do you think it would be good for the patient?

A. I don't think it would hurt the patient any.

Q. Suppose he got all of these symptoms you just mentioned and continued to take it.

A. He would quit right then and there.

Q. How do you know he would?

A. Because they always have.

Q. But—

A. I never—in 20 years I have never seen a patient that did not quit.

Q. Would he have any knowledge of what was causing his condition?

A. When he can't stand he won't take any more medicine.

Q. How would he know it is the medicine that is causing the condition?

A. I don't know, but he does.

Q. He might think something else. He might think he had a disease of some kind.

A. Some doctor will tell him. If he calls in another doctor, he will tell him to quit taking it.

Q. Did you ever prescribe Marmola for a patient?

A. No, sir.

Q. If thyroid is so harmless, as you say, Doctor, and

can be taken so indiscriminately as to dosage and so on, and leave it to the patient's own feeling as to when he should stop, and so on, what is the necessity of doing anything other than giving the patient a bottle of desiccated thyroid tablets, and then saying, "Go on, take these home, and then you will be all right after a while"? Why isn't that sufficient?

A. Because I wouldn't eat.

Q. You just have them come back so that you can charge them the fees?

A. All right, if you wish.

Q. You think that if the fees were left out, it would be all that would be necessary?

A. The patient is not harmed by the taking of thyroid, and if they get too much they stop.

Q. Would you do it that way if it was not a question of fees?

A. It wouldn't make any difference to me.

Q. Well, would you?

A. Well, I can testify about what I have done, but what I would do, I don't know.

Q. In your opinion, I believe you stated, that when a patient is taking too much thyroid he automatically stops taking it?

A. The patient does stop.

Q. And is that because the medication is having a harmful effect?

A. They can't get in the street car, they can't get in an automobile, they can't get up and downstairs, and they call me.

Q. That would be harmful, wouldn't it?

A. Harmful as far as doing their work is concerned, yes.

Q. Suppose instead of stopping they continued taking the dosage and those symptoms grew worse, would it be harmful?

A. I never seen a patient that was harmed by the taking of any sized dosage.

Q. I am not asking you that. I am putting a hypothetical case. Suppose the patient—

A. You are going out into a thing that I can't answer.

Q. You certainly have an idea about it. Suppose that medication would be continued by the patient and he wouldn't—this patient that you are assuming that automatically stops, continued the medication indefinitely, and those symptoms arose two or three weeks before it comes to your attention, and the medication has continued all the time, would that bring increased harmful results to the patient?

A. In the first place, how long is a patient taking thyroid? If you will give me that information I will try to answer the question.

Q. I will say taking it long enough to get weak in the knees and have symptoms that you just enumerated yourself.

A. And continue how long.

Q. Continue two or three or four weeks of the same dosage right along.

A. It wouldn't hurt that patient a particle.

Q. Would those symptoms increase or decrease or stay the same?

A. It depends on how much thyroid they are taking, and according to how much they can stand, according to the patient's tolerance.

Q. What is the reason for your instructions to leave off the medication then if it wouldn't change it?

A. Because that—in the first place, it is done because past a certain place a certain amount of reaction on the patient is considered by me to reduce that patient too fast, and if it is continued over a long enough period of time—and when I say a longer period of time, I don't mean a week or two—I think that that patient becomes enough restless and they become enough a nuisance to themselves and to their family that the patient has a tendency to be influenced to not take any treatment of any kind.

Q. Of course, that is a mere assumption, but isn't it true, Doctor, that when a patient does get weak in the knees from taking thyroid, and has those symptoms that you enumerated, that if he continues the taking of the thyroid all of those symptoms would be aggravated the longer it continued.

A. I think that is true, yes.

Q. How long would it take before they would be serious symptoms?

A. I don't know.

Q. They would ultimately become serious, wouldn't they?

A. I don't know.

Q. What is your opinion about it?

A. I have never seen it. I have never seen anybody harmed by the use of thyroid in any dosage that I have ever given, or even seen anybody else give.

Q. How long can you aggravate a deleterious situation without it being harmful?

A. That is a matter I can't answer.

Examiner Norwood: What happens when the patient takes more thyroid than he can stand?

The Witness: I have never seen that done.

Examiner Norwood: What is your theory of what would happen?



The Witness: My theory of it is that the symptoms would become so bad that the patient would just simply quit everything trying to get rid of them. I have tried—

Examiner Norwood: What is it that causes the patient to be weak kneed. What is your explanation of that? How does that come about by physiological action?

The Witness: I don't know. I have thought a lot about it, why their knees get weak, examined the patient from top to bottom, and all you find is an increase in the reflexes. There isn't another single thing that I can find wrong with that patient except they just can't do it. There is nothing harmful. There are no symptoms of any kind that are alarming to me in any way, and that is the reason that I have lost all fear of overdosage.

Examiner Norwood: There is no difference in the heart action or the blood pressure?

The Witness: The blood pressure goes down in these cases. It doesn't go up. Never goes up. I have never seen a case where it went up. Consequently, the absence of anything that I can put my finger on has made me lose all fear of it in any dosage.

Examiner Norwood: Go ahead.

By Mr. Michael:

Q. Do you consider it advisable for a person who wants to reduce to use self-medication by taking desiccated thyroid?

A. I think it is about on a par with iodine, it is about on a par with aspirin, or anything else. I would rather not have them use any of those things.

Q. Do you think it is desirable?

A. I don't know. I can't decide that question. I am deciding it entirely from a selfish standpoint.

Q. Well—

A. To me it would be ruination to me as a doctor.

Examiner Norwood: Well, from the patient's standpoint, do you?

The Witness: Would be just as well off to buy—

Examiner Norwood: To buy the medicine out of the store as he would come to see you about it?

The Witness: If he got enough, yes; I think he would get some place if he got enough.

By Mr. Michael:

Q. Is it advisable for a patient to do that?

A. I don't think it will hurt the patient any.

Q. You said you were opposed to self-medication?

A. I am.

Q. Are you in favor of self-medication by use of thyroid?

A. No, not any more than I am for aspirin or anything else. I want them to go to the doctor.

Q. Do I understand you to mean that is purely a selfish viewpoint?

A. It is very much so.

Q. Is it entirely?

A. Well, I don't know. I think of them as patients.

Q. Do you have any viewpoint as to the welfare of the patient in that view that you have about self-medication?

A. The patients will not hurt themselves with a dosage of thyroid if they are fat.

Q. My question is, Doctor: Is there any element of welfare of the patient in your viewpoint that a person should not use self-medication by taking desiccated thyroid?

A. I think there is cases where people can get into trouble by self-medication.

Q. By use of thyroid?

A. Possibly. I don't believe there is any drug that has a physiological action that is positive in its action but what you can overshoot the mark.

Q. And this preparation is positive in its action?

A. Positively.

Q. And very probable?

A. Absolutely.

Q. Is it your observation that patients, I mean generally, have any special knowledge about the proper dosage or the time that medication by use of thyroid should be continued?

A. I don't think they do.

Q. About all they know about it is that thyroid is used for reducing; isn't it?

A. I don't think that the average person knows that.

Q. Well, a lot of them do.

A. Some of them do, yes.

Q. Doctor, just forgetting the matter for the purpose of getting the matter on the record, and for information, is it your opinion that the desiccated thyroid that is taken from a dead animal, and the gland itself, is the same substance as the secretion of the gland in a live body?

A. When you say "dead" animal?—do you mean a slaughtered animal?

Q. Yes.

A. What do you mean?

Q. A slaughtered animal, yes.

A. It is the same action, exactly.

Q. You mean chemically? In other words, the gland itself is the same substance as the secretion when the animal is living?

A. No, I think that there is no difference between,

we will say, a human thyroid, and the thyroid of a sheep, we will say.

Q. Yes.

A. —secretion. There is certainly a little difference in the thyroid substance of the human and of the thyroid substance—I think there is a little difference in their make-up, and there is certainly a little difference in the secretion, some times a lot of difference in the human secretion from that of the ordinary healthy animal thyroid.

Q. In other words, when you are taking desiccated thyroid, you are taking the gland itself?

A. You are taking the gland itself.

Q. Rather than the secretion?

A. That is right.

Examiner Norwood: Well, that is similar in action to the secretion?

The Witness: Just the same.

Examiner Norwood: Of the human gland?

The Witness: The thyroid substance, thyroxin, of course, in different substances have been extracted from thyroid substance with the idea of taking its place. None of them does the same thing. There is none of the extracts of thyroid substance that have approached thyroid substance in its physiological action and its nearness to human thyroid action.

By Mr. Michael:

Q. Doctor, would you advise a woman who is 8 months pregnant to run around the block?

A. Certainly wouldn't.

Q. What?

A. Not if she was in eight months. It would be bad business unless she had been doing it right along.

Q. Would the running around the block by a woman who is eight months pregnant increase oxidation?

A. Yes.

Q. Thyroid would have the same effect, wouldn't it?

A. About the same effect.

Q. Upon what do you base your opinion, Doctor, that muscular tissue is oxidized last in the action of the thyroid?

A. Various of the operative cases for the so-called toxic thyroid; we have occasion to open up the skin in certain abdominal operations where there has been a great deal of increase in the metabolism. We have had occasion to actually examine a live patient with reference to the amount of fat, and the amount—and the condition of tissue in a live patient.

Q. Your observation would only be on the fat, wouldn't it?

A. Observation would be on the fat and on the muscular tone. The muscular tone can be determined under anaesthetic much nicer than it can when a patient is awake.

Q. How could you tell that no muscular cells had been used up?

A. You can't tell, but you can tell of the general well being of the feel of the muscle.

Q. Well, you can have some oxidation of muscular cells and still have that tone, can't you?

A. Possibly.

Q. That is a natural body process, isn't it?

A. Yes.

Q. The tearing down of the cells?

A. Yes.

Q. In the normal body and in the normal operations of it, are only fat cells torn down or all cells?

A. All the cells.

Q. All the time?



A. Yes.

Q. When you are taking thyroid and increase that activity, the increase is general, isn't it?

A. I don't think so. You are increasing oxidation.

Q. Yes, but the increase of the breaking down of the cells is general bodily breaking down, isn't it?

A. True. That is catabolism.

Q. It isn't confined to fat cells, is it?

A. No. It is replacement, though. The feature that you are not taking into consideration in your statement is the fact that your build-up and your tear-down is approximately the same, and the muscle that is flabby from disease or from any other cause can be determined quicker by feel. It is just like the feeling of an apple to see whether it is wrong or not. After you have done that you can tell the tonicity of the muscle quicker by feeling than by any other way.

Examiner Norwood: But does that determine whether or not any part of the original muscle has been consumed, though, through increased metabolism?

The Witness: I cannot be determined down to the microscopical—you would have to do a microscopical examination to determine that.

Examiner Norwood: There is nothing there to indicate whether or not part of the muscle had been consumed along with the fat?

The Witness: Except approximately.

By Mr. Michael:

Q. Referring to your experience with your hunting dog, I believe you stated that you gave the dog, or between what you gave it and what the dog ate, a hundred grains of the gland itself?

A. No, that wasn't the statement. The gland as it is dissected out of the dog, it is dissected out in one piece,

and that represents the total thyroid gland of that animal. It is desiccated out of it. In this particular case there was a hundred thyroids. In other words, the thyroids from a hundred sheep, not in weight, but in number, a hundred thyroids.

Q. One hundred thyroids?

A. Yes, sir.

Q. Do you know what that would weigh in grains?

A. No, I wouldn't.

Q. Of desiccated thyroid?

A. No; desiccated thyroid represents approximately five or six grains of fresh gland, a grain of desiccated thyroid, and we didn't weigh these thyroids because we went on the assumption that a sheep thyroid would be sufficient for that sheep, and that a dog half the size would get an awful lot of thyroid if we gave him two a day.

A hunting dog that would fall down, would only hunt about half an hour, wasn't worth very much to me, and I made up my mind I would either kill him or cure him.

Q. One of those thyroids contains more than a grain of desiccated thyroid after it was treated and extracted?

A. Oh, yes, they would contain a little bit more than that because they must have weighed, oh, must have been up close to an ounce in weight.

Q. Do you think that probably it would be very much more than a grain out of each one of them?

A. The statement that I made, is that a fresh thyroid would be cut down to about one sixth or one seventh of its weight, make it more than that, probably thirty grains of desiccated thyroid. The dose was enormous.

Q. In other words, if that is true it would be 3,000 grains that that dog had?

A. Well, I am only guessing at it. I told you about

the experience, not how many grains of desiccated thyroid the dog took. I don't know.

Q. If your estimate is correct, that would probably amount to—

A. It would be a lot. It was two quarts of them. The hundred thyroids would be approximately two quarts of tissue with the—not necessarily all thyroid tissue, but as they dissected out by the man that does that thing in the slaughter house.

Q. Later, I believe you said you experimented on dogs that you got from the pound?

A. Yes.

Q. You used a dosage of 100 grains of desiccated thyroid at a time; is that right?

A. I did that a number of times.

Q. A number of times?

A. Yes.

Q. What symptoms did these dogs show?

A. Didn't show any.

Q. You made a careful examination?

A. I watched them, even went out at night to see if there was anything happened to them.

Q. Do you know whether or not certain animals may have a tolerance for this substance?

A. I think they do have. I think the dogs want them.

Q. It doesn't affect them at all?

A. Yes, it affects them, but it doesn't seem—it seems as if they can take enormous doses of thyroid. At least, that is my observation, that they take very large doses without very many symptoms.

Q. If that is true, these experiments would show nothing, would they, so far as the dogs—

A. My dog that took the 100 grains of thyroid won the blue ribbon over in Canada as a trial dog.

Q. It wouldn't show anything as to whether or not it is harmful or injurious for a human being to take it?

A. I don't think that it is worth very much because the dog takes such big doses and with no apparent symptoms.

Q. Would you give a human being even for experimental purposes 3,000 grains of desiccated thyroid?

A. Oh, no. It would be foolish to do that because, in the first place, you wouldn't gain anything by it.

Q. Would you do it?

A. Why should you do it?

Q. I am asking if you would do it.

A. I don't know. I wouldn't do it.

Q. Would you consider it dangerous to do it?

A. Oh, I don't know. I know that the thing is so preposterous and so out of proportion that I wouldn't even think of doing it.

Q. Did you ever give a dosage of 100 grains of desiccated thyroid to a human being at one time?

A. I have often offered to take 100 grains of thyroid myself.

Q. Why wouldn't you give it to patients who had an extreme case of obesity?

A. Well, in the first place, graduated doses is the rule of medicine, and, secondarily, in all the stations that have obesity, there is a sane and reasonable way of doing things, and I am not in the habit of going off half-cocked and doing the thing just merely because some lawyer suggested it.

Q. Would you be afraid to do it?

A. Well, I don't know. It isn't a fair question. I have never done it. I don't think I would do it.

Q. Do you know whether your opinion as to the action

of thyroid in lowering blood pressure is shared by the consensus of medical opinion?

A. I couldn't say as for that.

Q. Did you ever hear of the contrary opinion?

A. I don't know that I have.

Q. Did you ever give more than 30 grains a day of desiccated thyroid to a patient?

A. I think that is about the limit that was necessary, if I remember rightly. I don't remember of giving more than 30 grains.

Examiner Norwood: Was that 30 grains in three or four doses, or in one dose?

The Witness: All at one time.

Examiner Norwood: You have given that in actual treatment?

The Witness: Yes. I don't split the doses. It isn't necessary.

Examiner Norwood: Just one time a day?

The Witness: Just one time a day.. It takes four or five days to get the influence of the thyroid, consequently, there is no need of making divided doses because the action is too slow.

Mr. Michael: That is all.

Mr. Gust: That is all.

By Examiner Norwood:

Q. You say it takes four or five days to get the influence, and you said something about the length of time required in the absorption of this desiccated thyroid. How long in your opinion would it take for the body to absorb it?

A. I think—

Q. Say a three-grain dose of thyroid?

A. Well, I don't know how long it takes to absorb it,



but I know that your physiological action is several days in development. In other words, you can't give a dose, of, say 20 grains today and 20 tomorrow without eventually getting into some kind of an overstimulated condition. It takes about six or seven days to get the full action of it, and that is the reason you don't need to divide your doses.

Q. I am speaking about this going through the first process.

A. I think the first process goes through in four or five hours. Ether and digitalis work different times, physiological action comes at different times, so it is with thyroid substance.

Q. Wouldn't you think, then, that if you took 30 grains in one dose, that all of that would be absorbed and go through the first process of absorption to the extent of retaining it in the system before it would be passed out, eliminated?

A. Did you ask a question?

Q. Yes, sir.

A. I didn't get it.

Examiner Norwood: Will you read it to him?

(Question read as above recorded.)

A. Well, the first process would be the digestion and the making of the active principle, whatever it is —

Q. Yes.

A. —into the blood stream and into the tissues. Now, that goes through so slowly, gets to its action and is stimulating action to the different glands and the different parts of the body, that the giving of a dose all at once is immaterial. It is fed in a little at a time.

Q. What I am getting at is—

A. The digestion never would be through in four days.

Q. Many animals pass food through without it ever being digested at all, and I was just wanting to know if

you thought in cases where it was in as large a dose as 30 grains it would be an action that might be injurious in taking small doses at different times?

A. Oh, no.

Q. Whether or not some of that would —

A. No.

Q. —pass through undigested.

A. It might do that. I don't know. But it is, regardless of whether it is right or wrong, it is the procedure. That is the thing that I am doing. I don't know whether it is right. This is very much on the order of a pioneering and you don't know and you have to observe and do the best you can.

By Mr. Michael:

Q. Doctor, is it your observation that the regular taking of desiccated thyroid shows an accumulative effect?

A. It doesn't accumulate.

Q. That is what I am asking.

A. No, it doesn't.

Q. Another thing I have neglected to ask you: Did I understand you to say or to infer that you classify yourself as a specialist in endocrinology?

A. I don't claim to be a specialist of any kind, but I have given a matter of half my time for 25 years to the consideration of endocrine change.

Q. Is your practice confined mostly to that subject?

A. I should say pretty close to half of my business is obesity.

Q. And the rest of it?

A. And the rest of it is largely surgical. I operate in the hospitals of this city from time to time for goiter and for abdominal complaints.

Q. That is associated with the subject that you are—

A. It is because of the fact that I did female surgery in my early days and had my training there that I got to treating women with the ovaries taken out, and from that my study of thyroid and the different endocrine substances was developed.

Q. In other words, your practice is confined mostly to endocrinology and kindred subjects?

A. Yes.

Q. That develop in that connection?

A. That is right.

Q. Is that correct?

A. Yes.

Q. How large a percentage of your practice is devoted to obese treatment?

A. About half of it.

Q. For how long a period have you been treating obese patients in such proportions?

A. It has been a gradual growth over a long period of time. When I first started out, I only saw the women that had their ovaries taken out. I didn't treat anything, but the tubo-ovariotomized patients—from that, because these women lost weight, which I had no intention of doing at the time, and I began to get patients that were stout for some other reason. That made a new problem for me, and it has been a gradual growth, not with any idea of doing this work, but because it was forced on me and became very interesting. Consequently, I kept following it along, and until during the times before the depression I think that I was doing as much as 75 percent of my work on obesity.

Q. I believe you stated that you had treated at least 5,000 patients for obesity?

A. Yes, sir.

Q. And that you had sixty to seventy at the present time?

A. That is right.

Q. Are those sixty or seventy patients that you are now treating for obesity the major part of your practice today?

A. No, it is about half of it.

Q. Doctor, have you treated these patients by dietary methods and not by glandular medication, you would be without the field of endocrinology; wouldn't you?

A. Yes.

Q. And the tendency of your treatment is to treat by glandular therapy; is it not?

A. I think that is right.

Q. Because you are an endocrinologist?

A. Yes, sir.

Mr. Michael: That is all.

Mr. Gust: That is all.

(Witness excused.)

Examiner Norwood: You have some more witnesses?

Mr. Gust: Not this morning. I want to offer a few things here.

I have here a package of Jad Salts, which has been referred to as an alleged competitor of the Raladam Company. I want to offer it in evidence.

Mr. Michael: I would like to see what the record shows on that.

Mr. Gust: What do you mean? You mean as to whether or not it was cited as an alleged competitor of the Marmola Company?

Mr. Michael: I do not remember the evidence offhand.

Mr. Gust: I will make the offer.

Mr. Hornibrook: My recollection is that it was not referred to.

Mr. Michael: I don't recall it. That is the reason I raised the point.

Examiner Norwood: We haven't the time to look at the record and I would be inclined to receive this, subject to being withdrawn on my motion.

Mr. Michael: I object further for the reason—

Examiner Norwood: Because, otherwise, it is certainly irrelevant.

Mr. Michael: I object for the further reason it is not offered to a witness for any means of identification.

Mr. Gust: Oh, I could put a witness on that purchased it, if you insist on that. It was purchased out of a drug store. It is available in any drug store.

Examiner Norwood: The Jad Salts just described here will be marked for identification "Respondent's Exhibits 14 and 14-A."

(The container and jar referred to were marked for identification "Respondent's Exhibits 14-A and 14-B.")

Mr. Gust: I have here a package of tablets put out by Armour Company, which is a competitor of the Marmola Company. I offer that package in evidence.

Examiner Norwood: The package of thyroid tablets manufactured by Armour & Company, being a bottle, and the pasteboard container, may be marked for identification as "Respondent's Exhibits 15-A and 15-B."

(The container and bottle referred to were marked for identification "Respondent's Exhibits 15-A and 15-B.")

Mr. Gust: I also have a bottle of thyroid put out by Eli Lilly & Company, which has been cited by the Commission as an alleged competitor of the Marmola Company. I offer that in evidence.

Examiner Norwood: The bottle just described is marked for identification as "Respondent's Exhibit 16.")

(The bottle referred to was marked for identification "Respondent's Exhibit 16.")



Mr. Gust: I also have a bottle of a preparation called "Phytoroides," which is cited as an alleged competitor of the Raladam Company, and I offer that in evidence.

Examiner Norwood: Mark it for identification "Respondent's Exhibit 17.")

(The bottle referred to was marked for identification "Respondent's Exhibit 17.")

Mr. Gust: I also have a package here that is put out by the Kellogg Company. When Mrs. Boyer was on the stand she testified that a person who wrote in got a sample package containing a questionnaire and a sample of the medicine. Now, I have that package here, which I would like to offer in evidence.

Examiner Norwood: In other words, you offer this small container and the small bottle marked "Kellogg's"?

Mr. Gust: That is right.

Examiner Norwood: And the circular reading matter therein contained?

Mr. Gust: Here is the questionnaire. I want that in.

Examiner Norwood: And also the questionnaire?

Mr. Gust: That is right.

Examiner Norwood: Is that all you are offering in connection with this?

Mr. Gust: That is all I care about it. If the Commission wants all of it in, I have no objection to the other advertising literature going in.

Mr. Michael: If it is in the package it should all go in.

Mr. Gust: All right, then, I offer it all, the package with its entire contents.

Examiner Norwood: Then Respondent's Counsel further offers four papers and one envelope contained in the package, which are the small carton and other contents described, and which were sent to him. Mark these for identification. The small bottle, "Respondent's Exhibit 18."

(The bottle referred to was marked for identification "Respondent's Exhibit 18.")

Examiner Norwood: The small carton, "Respondent's Exhibit 19."

(The carton referred to was marked for identification "Respondent's Exhibit 19.")

Examiner Norwood: There is also a large carton with the postmarks on it. Mark that "Respondent's Exhibit 20."

(The large carton was marked for identification "Respondent's Exhibit 20.")

Examiner Norwood: The printed circular headed "The Action of Kellogg's Rational Treatment for Obesity," mark that "Respondent's Exhibit 21," the questionnaire above referred to, mark that "Respondent's Exhibit 22"; the envelope that came in the package, mark that "Respondent's Exhibit 23"; the circular letter headed "F. J. Kellogg Company, Battle Creek, Mich.," consisting of 2 pages we will mark that "Respondent's Exhibit 24"; circular for remittance headed "One Week's Treatment—Two Dollars," mark that "Respondent's Exhibit 25"; a circular in two colors headed "Health Improved While Reducing," mark that "Respondent's Exhibit 26"; the letter in handwriting, dated July 1, 1933, to F. J. Kellogg Company, mark that "Respondent's Exhibit 27."

(The documents referred to were marked for identification "Respondent's Exhibits 21, 22, 23, 24, 25, 26 and 27.")

Examiner Norwood: Now, you have another witness coming in this afternoon?

Mr. Gust: No, Your Honor. I want to make some further offers of proof. I won't have any more witnesses unless there is some technical objection that would require a witness to identify these things.

Examiner Norwood: How long will we take? Will we adjourn now and come back after lunch?

Mr. Gust: I am willing to go through.

Mr. Michael: It doesn't make any difference to me.

Examiner Norwood: Take a five-minute recess and then we can attend to the rest of the business.

(A short recess was taken.)

Mr. Gust: I also have a bottle of thyroid substance made by Wilson & Company which I offer in evidence.

Examiner Norwood: Mark it "Respondent's Exhibit 28," for identification.

(The bottle referred to was marked for identification "Respondent's Exhibit 28.")

Mr. Gust: I also have a package of Eskay's Dextrettes, which was cited as an alleged competitor of the Raladam Company, which I offer in evidence.

Examiner Norwood: This consists of a container and five cylindrical packages of, I presume, tablets done up in foil. You may mark the container "Respondent's Exhibit 29," and one of the packages "Respondent's Exhibit 30."

(The container and package were marked for identification, respectively, "Respondent's Exhibits 29 and 30.")

Mr. Gust: I have here an alleged copy of a complaint filed by the Federal Trade Commission, entitled "In the matter of Dispensary Supply Company, Inc., Docket No. 2559," of the Federal Trade Commission. This document was given to me by the Federal Trade Commission. I offer it in evidence, it being directed against one of the alleged competitors cited in these proceedings as a competitor of the Raladam Company.

Mr. Michael: I object to the introduction of the exhibit for the reason it has nothing to do with the issues in this case, and for the reason that the issuance of the com-

plaint, the allegations of the complaint, have had no final determination.

Mr. Gust: Do you object to it because it is not the original complaint that you have filed with the Commission?

Mr. Michael: No.

Examiner Norwood: The objection is sustained.

Mr. Gust: I would like to have it marked for identification.

Examiner Norwood: Mark it Respondent's Exhibit No. 31.

(The complaint referred to was marked for identification "Respondent's Exhibit 31.")

Mr. Gust: I want to know whether there is any technical objection here now that I have not offered the original complaint from the files of the Trade Commission, or because this is not officially certified by the Secretary of the Commission. I offer to do both of those things, but I am offering it in the form that the Commission handed it to me, and I think it is authentic. I have every reason to believe it is.

Examiner Norwood: I will sustain the objection right here and now on that. It is not relevant.

Mr. Gust: I also have an alleged stipulation in the same form with the Federal Trade Commission, Stipulation No. 0638, with respect to Germania Tea, one of the preparations which has been mentioned as sold by an alleged competitor of the Marmola Company. This is in the same form that the Commission handed it out. It isn't certified, or is not an original, but I offer to supply those defects, if they are defects.

Mr. Michael: Mr. Examiner, I have several objections to the introduction of this proffered exhibit. The first is, it is merely in the form of a public release and doesn't contain a copy of the entire stipulation; for the further reason that it is not relevant to this case; it has nothing to do with

the issues of this case; I object further on the ground that a stipulation is merely a voluntary agreement entered into between the proposed Respondent and the Commission and has no final determination of any question that might be involved in the terms of the stipulation. I object further on the ground that even if the stipulation is well founded and were a final determination after the taking of testimony, and if it involves an alleged misrepresentation, that it would not determine the question as to whether or not the product involved was still in competition with Marmola, and that correct and true proper representations could be made in the sale of the product even if improper representations might have been in the past.

Mr. Gust: In so far as it is not a complete copy of the stipulation, I offer to supply that defect by offering the original stipulation from the files of the Federal Trade Commission. This is what the Federal Trade Commission handed me as being an authentic digest or resume of that stipulation and was also given to the press and released to the public generally. Now, if there is a serious objection that the entire stipulation should be in evidence, I am perfectly willing to supply that and ask an opportunity to do it.

Examiner Norwood: Well I will agree that you may proffer that at another time when you get the certified copy. As to this proffer here, I will sustain the objection, and you may mark it Respondent's Exhibit No. 32.

(The stipulation referred to was marked for identification "Respondent's Exhibit 32.")

Examiner Norwood: Counsel withdraws the grounds—

Mr. Michael: Let it be waived—

Mr. Gust: Counsel for the Commission waives that portion of his objection directed to Respondent's Exhibit No. 32, in which he objected that this was not the original



stipulation nor a complete copy thereof, but insists on the balance of his objection relative to its materiality and relevancy.

Mr. Michael: And calls attention to the fact that this is not a complete copy of the stipulation.

Mr. Gust: All right.

Examiner Norwood: The same ruling is made. The paper is marked for identification, but is rejected from the evidence.

Mr. Gust: The Respondent rests.

Examiner Norwood: I will rule upon the exhibits unless Counsel for the Commission withdraw their objections at some future time.

Mr. Gust: I will state on the record that the packages offered were put out by the alleged competitors, and are complete authentic packages as obtained by me, and I will further agree that if the Government finds that if the druggist who sold me the package left out anything, that it can be supplied at any time.

Mr. Hornibrook: Not only the druggist, but if we find that there is anything left out.

Mr. Gust: All right; if there is anything out.

Mr. Michael: Can we agree that they be received with that reservation?

Examiner Norwood: Yes. Then the exhibits marked for identification Respondent's Exhibits 14 to 30, inclusive are received in evidence as agreed.

(The exhibits referred to, heretofore marked for identification "Respondent's Exhibits 14 to 30," both inclusive, were received in evidence.)

Examiner Norwood: What is the pleasure of Counsel for the Commission.

Mr. Michael: The Counsel for the Commission made cer-

tain reservations as to resting. I would like to recall Mr. Hayes.

EDWARD HAYES was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

### Direct Examination

By Mr. Michael:

Q. Mr. Hayes, it is my recollection that at a previous hearing you were asked to look for and procure for the purpose of introducing in evidence a booklet that was used at one time by the Raladam Company in the package containing Marmola, which had in it the statement, "We feel a responsibility to those who buy Marmola, and we wish them to know all the facts at our command."

Did you look for one of those booklets?

A. Yes, sir.

Q. Did you find one?

A. Yes, sir.

Q. You have it with you?

A. Yes, sir.

Q. May I have it, please?

A. Yes.

Q. Mr. Hayes, I will hand you this booklet, which I will ask the Reporter to mark for identification "Commission's Exhibit No. 43," and ask you to state if that is one of the booklets to which I referred in my previous question?

(The booklet referred to was marked for identification "Commission's Exhibit 43.")

A. This is one of the books, one of the booklets, but there has been several of them. There has been several

changes made in this booklet. This booklet that I have here now in my hand was used—was printed in 1927, but it contained that sentence.

Q. That I quoted?

A. Yes.

Q.. For how long after this particular booklet was printed did you use this one without any revision whatever?

A. Well, not any more than a year, maybe not that long.

Q. And then it was revised?

A. Yes.

Q. In what particular?

A. Well, I can't state in what particular. I don't know. I can't—because I don't remember, but the book was changed six times between 1927 and 1931.

Q. All right.

A. And the best of my recollection and from what I could find in the records in my office, and what I could find from my secretary, is that there has been no booklet used since January, 1929, that has that paragraph in it.

Q. But you did ascertain that it was used up to January, 1929, that had the sentence in?

A. Yes.

Q. "We feel a responsibility to those who buy Marmola"—

A. That may have been changed a little. I don't know. But the sentence—

Examiner Norwood: Well, this complaint covers the period from April 17, 1929.

Mr. Michael: That is right.

By Mr. Michael:

Q. Mr. Hayes, I will ask you to examine this book, which has been marked for identification as Commission's Exhibit 43, and ask you to state if that sentence that I re-

ferred to does not read this way: "We feel a responsibility to those who buy Marmola on our advice" instead of the sentence which I gave you before.

Mr. Gust: The book is the best evidence. If it shows that all right.

The Witness: Yes, it does say that.

By Mr. Michael:

Q. I wish you would, if you have it, produce the booklet which has the sentence in as I read it before, "We feel a responsibility to those who buy Marmola and we wish them to know all the facts at our command."

A. God, I don't know whether I got that or not.

Q. Is that it (indicating)?

Mr. Gust: Do you want to substitute that for the other?

The Witness: Substitute that for this one, if you wish (indicating).

Examiner Norwood: Well, we will give that another number and leave that one in. We have already made the record. It would be hard to straighten it up.

By Mr. Michael:

Q. Now, I will hand you this booklet, Mr. Hayes, which I will ask the Reporter to mark for identification as Commission's Exhibit No. 44, and ask you to state whether that has on the inside of the cover, the sentence: "We feel a responsibility to those who buy Marmola and we wish them to know all the facts at our command."

A. Yes, it does.

(The booklet referred to was marked "Commission's Exhibit 44," for identification.)

Q. When was the booklet in the form as shown by Commission's Exhibit No. 44 used?

A. Well, I would—I think it was used between 1920 and 1928.

Q. Between 1920—

A. No, it was used in 1928. This other booklet here, the first booklet, was used in 1927.

Q. Oh, I thought you said that was used up until January, 1929.

A. Not that booklet alone without revision.

Q. I see. How long was the one identified as Commission's Exhibit No. 43 used?

A. This one here (indicating).

Q. Yes.

A. I can't tell you. I don't know just how many months, or—it was used.

Q. And the one which has been identified as Commission's Exhibit No. 44 was used how late?

A. I think in 1928.

Q. 1928?

A. It was used in part—it might have been used in the latter part of '27.

Q. Then did you make another revision?

A. Yes; there was another revision made.

Q. Do you have that revision here?

A. There it is there (indicating).

Examiner Norwood: Did you use that expression in any booklet in the sale of this medicine subsequent to April 17, 1929?

Mr. Gust: Do you mean that expression "We feel the responsibility"—

Examiner Norwood: The expression that he has read into the record, yes.

The Witness: That has not been used since, so far as we can learn, since January, 1929.

By Mr. Michael:

Q. I wish you would show me, if you have it, the booklet containing that expression that I read to you that was



used last, the last revision of your booklet which contained that sentence.

A. Here it is.

Q. Mr. Hayes, I will hand you this booklet, which I will ask the Reporter to mark for identification "Commission's Exhibit No. 45," and ask you to examine it and state whether or not that is the booklet which was the last one used by your company, the Raladam Company, which contained the sentence that I read in my opening question?

(The booklet referred to was marked for identification "Commission's Exhibit 45.")

A. That is the last booklet that has that sentence in it.

Q. I wish you would look at Commission's Exhibit No. 45, for identification, and state whether or not it also has on the front cover the sentence or phrase and also the formula?

A. Yes, it does.

Q. That sentence does not appear on the booklets marked for identification as Commission's Exhibits Nos. 43 and 44, does it?

A. No, it does not.

(There was a discussion off the record.)

Q. Mr. Hayes, I will ask you to take Commission's Exhibit 45, for identification and examine the outside front cover and the inside of the front cover, and ask you to state if that is a duplicate of the opening portion of Exhibit 1-A filed by the Raladam Company in the United States Circuit Court of Appeals for the Sixth Circuit as part of the answer of the petition to paragraphs (g) and (h) of Respondent's answer in the nature of a cross-bill?

Mr. Gust: I object to that. They speak for themselves, if they are duplicates.

Examiner Norwood: He may verify it.

A. Yes, sir.

By Mr. Michael:

Q. Just the same?

A. Just the same.

Q. What would you say, Mr. Hayes, as to whether or not this booklet marked for identification as Commission's Exhibit No. 45 is the same booklet as was copied in that exhibit that I have just referred to as having been filed in the Circuit Court of Appeals?

A. I suppose that was copied out of that booklet.

Q. Would you say that was the same?

A. I would say so.

Mr. Michael: I offer in evidence this booklet which has been marked for identification "Commission's Exhibit No. 45."

Mr. Gust: I have no objection.

Examiner Norwood: It is received as Commission's Exhibit 45.

(The booklet referred to, heretofore marked for identification "Commission's Exhibit 45," was received in evidence.)

By Mr. Michael:

Q. Mr. Hayes, who was president of the Raladam Company on the 15th day of November, 1929?

A. I don't know whether it was myself or someone else. Originally, when the Raladam Company was formed, I was not president. I was just made general manager of it. I was general manager, anyway, at that time.

Q. Did you know a person by the name of Edena Maas?

A. Yes.

Q. Is that a man or a woman?

A. A woman.

Q. Was she ever president of the Raladam Company?

A. I think so.

Q. When did she retire as president?

A. I can't—I don't know the date without looking it up.

Q. Do you know approximately?

A. No, I don't even that.

Mr. Gust: I will agree she was president at the time that verification was made, if that is what you want proved.

Mr. Michael: Yes.

Mr. Gust: Well, I will stipulate that, that she was president on the date that she verified that paper.

Mr. Michael: On November 15, 1929.

Mr. Gust: Is that the date of it?

Mr. Michael: There it is right there (indicating).

Mr. Gust: Yes.

By Mr. Michael:

Q. Do you have any way now of identifying the exact time when your company discontinued inserting the booklet which has been entered in evidence here as Commission's Exhibit No. 45 in the packages of Marmola that were shipped out of the plant?

A. Only that of an opinion. I cannot give you—I haven't gotten any written or documentary evidence to show or any record, because when these booklets were made or the changes in these booklets were made, there was no record made of it in our office. They were just—when the new booklets came in they were just put into the packages.

Q. You haven't any way from your records, or haven't been able to find an exact date when a revision was made and the sentence which I have quoted "We feel a responsibility to those who buy Marmola and we wish them to know all the facts at our command" was eliminated?

A. All we can tell about it is orders given to printers, and there was a new booklet come out at that time.

Q. In January, 1929?

A. Yes, and that paragraph was taken out of the booklet and was rewritten by Mr. Claude Hopkins. In fact, he wanted to change the booklet or rewrite some part of it practically every time that we would give an order for a new booklet.

Q. Then all you base your opinion upon is the fact that there was a new printing of the booklet?

A. Yes.

Q. In January, 1929?

A. Yes.

Q. But you have no recollection as to whether or not the sentence that I have read to you was eliminated at that time?

A. I think—yes, we do believe that because—

Q. I say, it is just a belief?

A. Yes.

Q. You haven't any record showing that sentence was eliminated in that new printing?

A. We got other printed here, and all of them have that out of it. Here is three of them (indicating). Here is three different booklets, and neither one of them has that in it.

Q. You don't know when those were printed?

A. I can't tell you the date, no. I cannot. All I can tell you is what we believe to be.

Q. But it might have been later than January, 1929?

A. It is barely possible, but I don't believe it.

Q. Even if it were eliminated from the printing that you had made in January, 1929, there might have been thousands of packages of Marmola that were still being sold and were sold after that date and during that year, later in the year, that contained the prior printing?

A. Yes, it might have been on the druggists' shelves. I can not tell that. They might have been on—

Q. They might have been on your shelves?

A. No, they wouldn't be on our shelves.

Q. Don't you keep a stock of it?

A. No, our stock goes out. It changes every week.

Q. Where do the packages go, at your place or at Parke-Davis'?

A. They are placed in at Parke-Davis'.

Q. Yes.

A. Yes.

Q. And they keep hundreds of thousands—

A. They don't keep them at all. We keep them and send them out to them.

Q. But they keep hundreds of thousands of packages already put up of Marmola all the time; don't they?

A. No, they do not.

Q. Are you familiar with the fact that Edena Maas, president of the Raladam Company, on the 15th day of November, 1929, made affidavit to the effect that a booklet with the sentence in it "We feel a responsibility to those who buy Marmola and we wish them to know all the facts at our command," was the booklet then in use by the company?

A. I don't believe it was in use by the company. I am quite positive it was not in use.

Mr. Michael: Will you read the question to him.

(Question read as above recorded.)

By Mr. Michael:

Q. Are you familiar with that fact?

A. I never knew that until I read it, just as you find it there.

Q. That is what she did, didn't she?

A. Well, maybe she did. Probably that—

Q. Yes. And at that time you knew all about what was being done in the filing of papers in that case, didn't you?



A. No; my attorneys were—I had several attorneys at that time. I didn't have just one. I had several of them.

Q. All one firm?

A. No, they were not all in one firm. They were in three different firms, and I furnished them all with various booklets and printed matter, and what they put into these records or briefs, or whatever you choose to call them, they did it, I didn't do it.

Q. Your attorneys of record?

A. Yes.

Q. In the Circuit Court of Appeals at that time were Stevens, Butzel, Manning & Long—

A. Yes.

Q. That is the firm of which Mr. Gust is—your present attorney—was connected with at that time, and is now connected?

A. Yes, it is.

Q. And no other attorneys appeared of record in that case, did they?

A. I don't know whether Mr. Connor appeared there or not. He may have and he may not. I can't tell you.

Q. I will hand you the pleading and let you refresh your recollection and see if any other firm appears on that heading.

A. No, there does not. This is Stephenson, Butzel Eamon & Long.

Mr. Gust: I do not remember whether Mr. Connor was of record in the court of appeals, but I will concede that was drafted in our office. I don't claim we never make mistakes.

By Mr. Michael:

Q. Mr. Hayes, I believe you stated in your previous testimony—if I am not correct, why, correct me—something

to this effect, that you had sold over 20 million packages of Marmola during the history of the company and had never had a complaint about bad effects of it.

A. I don't think I made such a statement.

Q. Well, is that true?

A. Did I make any such a statement as that?

Q. Is that true?

A. I wouldn't say so.

Q. What?

A. I wouldn't say so.

Q. Have you had any complaints?

A. Why, I have had people come in and say that they didn't get any results. I have had people say that they didn't—that they quit taking it because they thought it didn't agree with them, and so forth. That is, the Raladam Company. We used to have a mail-order business with the old Marmola business. That was previous to 1927.

Examiner Norwood: Have you ever had any injury claims? Have you ever had claims of injury from the use of the medicine?

The Witness: We have had people—we have had, I think, two cases in 28 years.

By Mr. Michael:

Q. What kind of cases were those?

A. Well, I can't—I don't know, but the Examiners that examined the people said that there was no damage done by Marmola.

Q. What kind of damages were claimed?

A. Well, I don't know as to that.

Q. Didn't they take it up with you?

A. No, I had them take it up with my attorneys.

Q. But, I mean, they made the original complaint to you or to the Raladam Company?

A. Well, they had—no, they didn't make the original complaint. They did make the original complaint, one of them did.

Q. Then you referred them to your attorneys?

A. Yes.

Q. They are only two of those in the entire history of Marmola?

A. That was only once that I recollect.

Q. Where did they arise?

A. What?

Q. Where did they arise?

A. They arose in—one of them was in—somebody in Texas. I don't know what the names are now.

Q. When was that?

A. I can't tell you that, either, because I don't know.

Q. Where did the other one arise?

A. I think we had another one here in Detroit.

Q. When did that arise?

A. That arose last year, I think.

Q. What did you do in those cases?

A. Those cases were referred to my attorneys, and they sent medical men out there to examine him, of a party, and that he made a report—Mr. Gust, he probably could tell you more about it than I can.

Q. Did you examine the party in Texas?

A. The party in Texas came up here. I think lived here for a while.

Q. And presented a claim?

A. Presented a claim, yes.

Q. While they lived here?

A. Yes.

Q. So—

A. They claimed they took the Marmola some place in Texas; I forgot the name.

Q. In other words, while they lived in Texas they presented the claim in your office?

A. They didn't while they were in Texas; they did that when they come up here.

Q. Did you have an examination made in that case, too?

A. Yes.

Q. How was that case disposed of, the Texas case?

A. The Texas case was disposed of. She was—this was a woman and her husband and she was—the woman was overweight, and so the story goes, I don't know whether it is true or not; she says she was in love with another man, she wanted to get her weight down.

Q. How was it disposed of?

A. It was disposed of like all of those cases are disposed of. Rather than to have publicity attached to it, why, you submit to injustice and you give them \$25 or \$30, or something of that kind, and let it go at that. That satisfies them.

Q. What did you pay in this case?

A. That was about what it was, \$25, I think.

Q. Twenty-five dollars?

A. Yes. Now, I didn't do that—they claimed they were stranded up here and they didn't have any money and didn't know what to do, so I gave them \$25.

Q. What injury did she claim she had?

A. Well, I don't recall that. She didn't look as if she had any injury.

Q. How did you settle the other case that arose in Detroit last year?

A. That was settled in a similar way.

Q. Did you—How much did you pay in that case?

Mr. Gust: I object to that, if the Court please. Going

into the details of those things. I think that is wholly immaterial.

Examiner Norwood: I think just the mere fact that there was a complaint—I think he has shown the situation there. Objection sustained.

Mr. Michael: May I be heard, Mr. Examiner?

Examiner Norwood: Yes.

Mr. Michael: If they made a financial settlement, they can explain it and tell what the amount was.

Examiner Norwood: No, I don't think it is competent for many reasons. The fact that they made the complaint and what the complaint was about, and what was the matter with the person is relevant, but these other details are absolutely not relevant.

Mr. Michael: Surely, if they settled—

Examiner Norwood: He might have made the settlement for other considerations.

Mr. Michael: He can explain that.

Examiner Norwood: In many of these cases rather than get adverse publicity they make a settlement of it. Objection sustained.

By Mr. Michael:

Q. Mr. Hayes, will you give the names of these two parties that you have just spoken of?

A. No—

Mr. Gust: I object to that as being wholly immaterial, if the Court please.

Examiner Norwood: The objection is overruled.

Mr. Gust: I don't know what the names are.

By Mr. Michael:

Q. Do you know what complaint as to harmful results or injury was made that this party claimed in Detroit last year?



Mr. Gust: I object to that, if the Court please, as being wholly immaterial. If she made a complaint, then you have got to go into the question of whether or not the complaint was right, and we have to litigate that issue.

Examiner Norwood: The objection is overruled. He may tell that.

The Witness: What was her complaint?

By Mr. Michael:

Q. Yes.

A. I don't know.

Q. But you settled anyway?

A. Yes.

Q. Are those the only two that you received during the history of Marmola?

A. Yes, sir; just those two.

Q. Did you ever have any complaints in regard to harmful or injurious results that were merely limited to correspondence?

A. That is all. That is, for many years we didn't have that because we don't have any correspondence.

Q. Did you have some complaints where people wrote in and complained?

A. Not in the history of the Raladam Company.

Q. You have been connected with it from the beginning?

A. Yes.

Q. Did the predecessor have any?

A. There might have been some letters come in that had some complaints, but I can't recall them. I know that my agents in England, in London, has been placing the business for 27 years, and do a mail-order business in Great Britain and Australia, New Zealand, South Africa, Egypt, and several other places, tell me that they never received a single complaint from anyone or from any source by tak-

ing Marmola, and they think it is the most remarkable thing as they are agents for a great many medical proprietary properties, and they are one of the largest people in the business in Great Britain. And they say that even though you put out water you will get some complaints, but we never had any complaint from any user of Marmola.

Mr. Hornibrook: I believe that the Respondent ought to wait for his proper time for argument.

Mr. Michael: I move—

The Witness: You can't find any proprietary matter in use that has had the least complaints that Marmola has had. There is practically no complaints.

Mr. Michael: I move the remarks of the witness be stricken on the ground that it was not responsive to the question.

Mr. Gust: I think it is responsive.

Examiner Norwood: I think that he can make that explanation. There is some hearsay testimony in there. If you will make—

Mr. Michael: It is all hearsay.

Examiner Norwood: If you will make an exact motion to exclude that hearsay I will consider that.

Mr. Michael: I move to strike out that portion of Respondent's answer dealing with what his agents had told him or his representatives had told him as being hearsay.

Examiner Norwood: Were those made in the due course of business?

The Witness: Yes. These people come over here from Fawcett & Johnson of London, England, made the statement in my office not any more than 3 years ago.

Examiner Norwood: They are your agents, are they?

The Witness: Yes.

Examiner Norwood: And they are your agents—

The Witness: And they are very responsible people.

Examiner Norwood: I believe that the explanation may stand. Objection overruled.

By Mr. Michael:

Q. Mr. Hayes—

Mr. Hornibrook: If they are his agents, it is a self-serving declaration.

By Mr. Michael:

Q. Will you tell me this: Why you so readily remember those things and it is difficult for you to remember whether you had complaints by correspondence in regard to Marmola?

A. Yes, those things were discussed in my office. They were brought up, something unusual in the proprietary business.

Q. Wouldn't you discuss matters of complaints?

A. I discussed it with them, matters of complaints. I have told them my experience here. We don't have any complaints.

Q. What is your best recollection of complaints by correspondence as to —

A. I don't think we have had any. Now, I wouldn't say that we did when I don't know. I can't say that.

Q. Do these two cases to which you referred to—if I get you right, in both of those cases there was nothing the matter with the women involved from taking Marmola; is that correct?

A. That is correct.

Mr. Michael: That is all.

Mr. Gust: That is all.

(Witness excused.)

Mr. Gust: Can we close the hearing?

Mr. Michael: I would like for the record to stand open for the present until we get the transcript and determine

whether we want to introduce rebuttal. We don't care to do that until we get the record.

Examiner-Norwood: The hearing is adjourned until 10 o'clock tomorrow morning, this room.

(Whereupon, at 1:50 o'clock p. m., March 12, 1936, the hearing in the above-entitled matter was adjourned.)

## PROCEEDINGS

Examiner Norwood: The hearing will come to order. Pursuant to adjournment on yesterday, a hearing is convened at 10 o'clock a. m. in Room 921 New Federal Building, Detroit, Mich., on March 13, 1936.

It appearing after consultation with Counsel on both sides of this controversy that there is no further testimony to be offered at this time and place and that Counsel for Complainant is desirous of a further hearing at a time and place which cannot be determined at the moment, and for good cause shown, this hearing is adjourned with the understanding that a further hearing will be convened after communication with Counsel and the issuance of five days' notice.

(Whereupon, at 10:20 o'clock a. m., March 13, 1936, the hearing in the above-entitled matter was adjourned.)

## PROCEEDINGS

(Continued April 9, 1936)

Examiner Norwood: The hearing will come to order. Pursuant to adjournment of the hearing in this case, on the 13th of March at Detroit, the hearing is now convened for the taking of further testimony in the City of Detroit.

Michigan, in Room 722 New Federal Building, a change having been made from Room 921, after due notice.

The hearing is called at ten o'clock a. m. on the 9th of April, 1936.

Mr. E. J. Hornibrook and Mr. Harry D. Michael appear for the Federal Trade Commission, and Mr. Rockwell T. Gust appears for the Respondent.

Call your witnesses, gentlemen.

Mr. Hornibrook: We will call Mrs. Alice Skardarasy.

Examiner Norwood: If you will take the chair. Have you a subpoena?

Mrs. Skardarasy: Yes.

Examiner Norwood: Very well.

ALICE SKARDARASY, called as a witness for the Commission, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Hornibrook:

Q. What is your occupation, Mrs. Skardarasy?

A. Housewife.

Q. And your age?

A. 46.

Q. What is your present weight?

A. I couldn't tell you.

Q. You haven't weighed recently?

A. No.

Q. Do you know what it was in 1935, June?

A. 168 or 169. 169 in June, 1935.

Q. Have you ever attempted to reduce?

A. No, sir.

Q. How is that?



A. No, sir.

Q. By that I mean get rid of excess flesh on your body?

A. Well, yes, last June I did, yes.

Q. June of 1935?

A. Yes, sir.

Q. And did you take any medicine or medication?

A. Yes, sir.

Q. What did you take?

Mr. Gust: Well, I object to this line of testimony as not being proper rebuttal testimony and not being rebuttal of anything the respondent put in in this case.

Examiner Norwood: What is the purpose of this testimony?

Mr. Michael: Mr. Examiner, please, if I may speak on the question.

Examiner Norwood: Yes.

Mr. Michael: This testimony that is offered is for the purpose of clarifying and giving the details of an instance that was referred to by Mr. Hayes in his testimony here in Detroit at the last hearing. Mr. Hayes was unable to give the details of this transaction, and we feel that we have the right, since he stands in the place of the respondent, and is really the adverse party in interest, to give the full details involved in the transaction that was referred to by him and concerning which he was unable to supply the facts.

Examiner Norwood: And you want to give her experiences in taking this Marmola.

Mr. Michael: Yes, sir.

Mr. Gust: If the Examiner please, Mr. Hayes was sworn as a witness for the Federal Trade Commission, and he was sworn as part of their case in chief, and not sworn by me, and if they wanted anything more in chief than they

got from Mr. Hayes they had their opportunity before resting to do it. ♡

Examiner Norwood: Well, I think they should be permitted to put this testimony in. It is very vital in this case as to the effects of this medicine, but I will say this witness will have to be confined to the facts.

Mr. Michael: All right.

Examiner Norwood: Attending her taking this. Now, if it appears clearly that it is not particularly rebuttal the respondent will have opportunity to put in a reply.

Mr. Michael: Yes. I might say, Mr. Examiner, that the Commission did not rest at the last hearing, but it was merely an adjournment to be resumed upon notice, and also I would say that the Commission's attorneys would interpose no obstacle to prevent the respondent from offering any evidence it should want to in regard to this evidence now offered, and I would like to also call the Examiner's attention to the fact that while Mr. Hayes was appearing for the Commission, yet by agreement his giving certain testimony was postponed until that time, which was the last hearing that was held. Now, we were in no position to offer this evidence prior to this time. We didn't know that he would not be able to give the facts of any case to which he referred, and the evidence involved has merely been ascertained since that hearing.

Mr. Gust: Well, Mr. Examiner, there was no agreement postponing Mr. Hayes' testimony with respect to this subject matter. The only agreement between counsel was that they wanted an opportunity to further examine Mr. Hayes about a booklet.

Examiner Norwood: Yes.

Mr. Gust: Now, I think they went completely outside their agreement when they asked the questions they asked of Mr. Hayes at the last hearing.

Mr. Hornibrook: But without objection.

Mr. Gust: Without objection is right, but still I say that this is not a proper time to bring this on. It is exceedingly unfair to the respondent. We have been to Chicago and taken expert testimony. They have taken their expert testimony in Detroit and to at this time bring in this sort of testimony is extremely unfair.

A. Well, I wonder if I—

Examiner Norwood: No, no, wait a minute. I think on this vital point that testimony should be admitted and at any time, if necessary, the case reopened to receive it. It is testimony that might possibly throw further light on the case, so I shall overrule the objection and admit it with the understanding that respondent can reply to it in case it appears it is not strictly rebuttal. You may go ahead.

Mr. Hornibrook: Will you read the last question, please?

(Last question read.)

A. Marmola.

Q. Marmola Prescription Tablets?

A. Yes, sir.

Mr. Gust: I take it that this objection applies to all this further examination?

Examiner Norwood: Yes, it may. Respondent has an exception to the entire line of questions.

Q. What was your purpose in taking Marmola?

A. To reduce. I wanted to reduce about 45 pounds or so, 35 or 40 pounds.

Q. Did your husband know you were taking it?

A. No, sir, he did not.

Q. How did you come to know about it?

A. From the glowing ads in the paper.

Q. And when did you start to take it?

A. It was June 18th.

Q. 1935?

A. 1935, yes, sir.

Q. And how long did you take it?

A. Until September 11th.

Q. Did you follow the directions?

A. Yes, sir.

Q. Contained with the package and in the booklet?

A. Four a day.

Q. Four a day?

A. Yes, sir.

Q. After each meal and upon retiring?

A. Yes, sir.

Q. That is four tablets a day?

A. Yes, sir.

Q. Where did you buy this, at the drug stores?

A. Almost all of them were bought at the Cunningham Drug Store.

Q. How many packages did you buy?

A. Seven in all.

Q. Did you take them all?

A. Oh, yes.

Q. What was the condition of your health when you began to take those?

Mr. Gust: I object to that, the witness not being qualified to answer.

Examiner Norwood: That is sustained. You may state the facts or give her symptoms or give her weight and all that.

Q. Were you well at that time?

Mr. Gust: I object to that for the same reason.

Examiner Norwood: Objection sustained.

Q. As a housewife, what were your duties?

A. Taking care of a seven room house and doing all the work.

Q. How many members are there in your family?

A. Four altogether, two children and my husband and myself.

Q. Did that work include your laundry?

A. Yes, sir.

Q. And cooking?

A. Yes, sir.

Q. And making of beds?

A. Yes, sir.

Q. And all that work?

A. Yes.

Q. Were you able to do all that work up until you began to take Marmola?

A. Yes, sir.

Examiner Norwood: You may ask her whether she was feeling well and whether she had any pains.

A. I considered I was in excellent health.

Mr. Gast: I move to strike it out, if the Court please, being a conclusion.

Examiner Norwood: Motion denied.

Q. During the course of taking Marmola, as you have testified to, did you notice any ill effects from it?

A. Not at first. I didn't seem to notice anything at all at first, but gradually I had weakness come over me, like fainting, and at times it got very bad and I had those fainting spells. I never had them before in my life and I had a numb feeling, and I suppose they wouldn't have found out about it if my husband and son hadn't went home that day when I had three of the worst spells on September 11th.



Examiner Norwood: That was after you had taken how many tablets?

A. That was all of the seven packages I had taken.

Examiner Norwood: I see.

Q. Did you cease to take it?

A. I beg your pardon?

Q. Did you cease to take these Marmola Tablets?

A. On that day and after—I didn't take any more after that time.

Q. After September 11?

A. Yes.

Q. What other ill effects, if any, did you notice?

A. Well, I got such a frightful old feeling. I thought I had aged 25 years all of a sudden. That is the feeling I had towards the end. That is just about the only way I can describe it.

Q. Was a doctor called in to see you?

A. Not until the end of September.

Q. The end of September?

A. Yes.

Q. Who was that physician?

A. Dr. Rosenman.

Q. Was he your family physician?

A. Yes, sir.

Q. For how long had he been your family physician?

A. It must be all of ten years now.

Q. Were you placed under his care?

A. Yes, sir.

Q. For how long?

A. Do you mean from September on?

Q. Yes.

A. Until just now.

Q. Until just now?

A. Until recently, yes, sir.

Q. He is still your physician?

A. Yes, sir.

Q. Had he attended you frequently?

A. Previous to that?

Q. Yes.

A. Yes, sir.

Q. In minor sicknesses?

A. I can say that I have had examinations and he has tested my heart, but I have never been ill.

Q. Yes. After taking this Marmola and experiencing the sickness about which you have testified, did you make any claim against the Raladam Company for injuries sustained due to the taking of Marmola?

A. Yes, sir.

Q. Do you recall when that claim was made?

A. No, I am afraid I don't. That was all left to Mr. Rommeck, the attorney.

Q. Was he your attorney?

A. Yes, sir.

Q. What month was that, do you recall?

A. No, I don't; I couldn't tell you now.

Q. Was it the latter part of 1935?

A. It was towards the end of 1935, yes, sir; sometime in there.

Q. He handled your claim, did he, that attorney?

A. Yes, sir.

Q. That you have named?

A. Yes, sir.

Q. Was there a settlement made?

A. Yes, sir.

Mr. Gust: I object to that as being incompetent, and immaterial.

Examiner Norwood: She can show if she received any-

thing. Let her tell the facts, if she knows. Objection overruled.

Mr. Hornibrook: Read the question.

(Last question and answer read.)

Q. Made by the Raladam Company.

A. Yes, sir.

Q. With you, or with you and your husband; which was it?

Mr. Gust: Same objection to this, if the Court please.

A. Understand I was in bed at that time.

Q. Who was present at the time this settlement was made?

A. Mr. Rommeck, Mr. Bell and my husband and myself.

Q. Mr. Ruther?

A. No, he was not there. Mr. Rommeck and Mr. Bell members of the firm, I presume.

Q. What was the amount of that settlement?

Mr. Gust: That is objected to, if the Court please, being immaterial to any of the issues raised here.

Examiner Norwood: Wasn't there some testimony as to this settlement?

Mr. Gust: No, your Honor.

Mr. Michael: It was referred to by Mr. Hayes and he was unable to give the amount and said it was merely some small sum, merely to get rid of the case.

Mr. Gust: That was something about a settlement with another woman from Texas, and he said it was a small amount.

Examiner Norwood: I think it is part of this transaction for them to show what settlement was made. Objection overruled.

Mr. Hornibrook: Will you read the question?

(Pending question read.)

A. \$3000.

Q. Would you have any objection if one of these attorneys whom you have named were called here as to their giving the details of that settlement.

A. No, sir.

Q. After the 11th of September, did you take to your bed?

A. Yes, sir; from the end of September on.

Q. Until what time?

A. Until the first of March.

Q. 1936?

A. 1936; yes, sir.

Q. And were you under the care of Dr. Rosenman during that period?

A. Yes, sir.

Q. Are you still under his care?

A. Yes, sir.

Mr. Hornibrook: That is all.

Mr. Gust: No questions.

(The Witness was excused.)

Examiner Norwood: Call your next witness.

Mr. Hornibrook: I will call Dr. J. D. Rosenman.

J. D. ROSENMAN, called as a witness for the Commission, being first duly sworn, testified as follows:

Examiner Norwood: Are there any other witnesses in the room?

Mr. Michael: No other.

#### Direct Examination

By Mr. Hornibrook:

Q. Doctor, will you give your residence and your office?

A. My residence is at 2434 Calvert Avenue, and my office is at 1014 Kresge Building.

Q. Are you a physician?

A. Yes, sir.

Q. Are you licensed to practice in the State of Michigan?

A. I am.

Q. Will you go into your background briefly, telling us about the school from which you graduated, and your hospital experience, if any, how long you have been in the practice and the nature of the practice?

A. Well, I attended the college of the City of New York, where I took my pre-medical training. I took my medical training at Columbia. I graduated from Columbia University in 1916.

During the years of 1910 to 1916 I was resident pathologist of the South Hammond Hospital of South Hammond, Long Island. In 1917 I entered Bellevue Hospital and I interned there until the middle of 1918. In 1918 I became pathologist of the Peoples Hospital of Akron, Ohio, and I was the pathologist there for one year. In 1919, I became engaged in the general practice of medicine and surgery.

Q. Here in Detroit?

A. I continued practicing in Akron, Ohio, for five years after I left the hospital there, and then I removed to Detroit in 1924, and I have been here since then.

Q. Have you specialized in glandular afflictions?

A. I am not a specialist. I am doing internal medicine and surgery.

Q. Have you had many cases of glandular affliction?

A. Quite a few.

Q. During your practice and experience?

A. I would say quite a few.

Q. Have you treated cases of obesity?

A. Quite a few.



Q. Could you give us any idea of how many?

A. I couldn't, but I would say, instead of answering quite a few, I would say many.

Q. Are you familiar with the therapeutic action and effect of drugs and medicines?

A. I think I am.

Q. And are you familiar with the therapeutic action and effect upon humans of the drug called desiccated thyroid?

A. Yes, I am.

Q. Have you used desiccated thyroid in your practice?

A. I have.

Q. In numerous cases?

A. In many cases.

Q. Have you read the literature upon the effects of desiccated thyroid?

A. I have.

Q. And have you had personal experience with patients who have taken desiccated thyroid?

A. I have.

Q. Many cases of obesity?

A. Yes.

Q. Do you know Mrs. Skardarasy of Detroit?

A. Yes, I know Mrs. Skardarasy.

Q. Is she a patient of yours?

A. Has been for about ten years.

Q. Have you made a physical examination of her from time to time?

A. I had occasion to do so in the past.

Q. Is she what you would call an obese person?

A. Well, I never treated her for obesity.

Mr. Gust: Did you say you had or hadn't?

A. I never have. In fact, I never treated her for any thing.

Q. Were you called to her residence on or about the 30th of September, 1935?

A. She came to my office on September 30th.

Q. 1935?

A. Exactly.

Q. And did you at that time make a physical examination of her?

A. I did.

Q. How extensive was that? Will you describe it?

A. I made a complete physical examination of her, including laboratory studies.

Q. Did you inquire as to what, if anything, she had been taking in the way of medication?

Mr. Gust: I object to all this testimony, if the Court please, for the same reason; it is not proper rebuttal. It does not bear upon anything that the defendant introduced in evidence in this case.

Examiner Norwood: Objection overruled.

Mr. Hornibrook: Read the question.

(Question read.)

A. It is a custom for a physician when giving a patient a physical examination to take a history of her case.

Q. And you took her history?

A. I did.

Q. Did that history include the taking of Marmola?

Mr. Gust: I object to that, as to what the patient told the Doctor.

Mr. Hornibrook: There is a confidential relationship existing between the Doctor and the patient. That is part of his diagnosis.

Mr. Gust: I don't think the fact, your Honor, that there is a confidential relationship makes it admissible. In fact, if it has any bearing at all, it makes it inadmissible.

Examiner Norwood: Read the question.

(Question read.)

Examiner Norwood: I think you ought to show that the Doctor knew what the witness has already testified to with regard to taking Marmola. You are supposed to show when he made his examination he knew she had taken it, and considered that in his investigation. I feel quite sure about that. Objection overruled. Read the question.

(Question read.)

A. If I am allowed to elaborate—

Mr. Gust: I object to that.

Examiner Norwood: Just answer the question, Doctor.

A. Yes, it did.

Q. Now, Doctor, I would like to have you go into this physical examination that you made and give us all the particulars about it, telling us what you did and what you found.

A. Am I allowed to refer to my record?

Mr. Michael: I submit, Mr. Examiner, that the witness should be instructed he has a right to refresh his recollection from his own records made at the time.

Examiner Norwood: He may do that.

Mr. Gust: If the Court please, it does not appear he make the record yet.

Examiner Norwood: Did you make a record?

A. Yes, sir.

Mr. Gust: Who made the record?

A. I made the record in person. I make records. My records are always made in person, and my nurse types them for me.

Examiner Norwood: And you remember the facts in connection therewith.

A. In fact, I can give them without referring to the records.

Examiner Norwood: Well, you may refer to your records if it is necessary to refresh your memory.

A. General appearance. Well developed, rather obese adult female about 45. Flushed and nervous. Voice tremulous. The skin is moist and warm. Erythemia occurring in blotches over upper chest and neck appearing and disappearing in accordance with emotional reaction of patient.

The eyes were negative, with the exception of some lagging of upper eyelids due to myosthenia. Mouth and throat were negative. No adenopathy. The thyroid, some fullness of the neck. Small palpable gland smooth and soft. Pulsation of vessels of the neck.

The lungs were negative. The heart sounds irregular rhythm and force of contraction. Pulsus perpetuus irregularis and alternans. Venous pulsion at upper gastric region.

The abdomen was negative. Genitalia negative. Blood pressure 140, with a variation to 110, systolic by 60 diastolic. A very irregular systolic reading. Pulse irregular in rate and force. Hence we did not report the number.

Extremities: Fine and coarse tremor of the hands and fingers. Reflexes, very active. The laboratory findings: Hemoglobin of 7500 blood cells, and white blood cells 7500, and urinalysis was completely negative. The diagnosis of the patient was a diagnosis of thyro-toxicosis.

Q. Would you just tell us what that is, thyro-toxicosis?

A. Well, it is intoxication of the thyroid, a state of intoxication.

Q. From taking that desiccated thyroid?

A. Due to the action of the thyroid. It would be the abnormal state of it due to the acceleration, or use of excessive amount of thyroid. Of course, comparing this with

the history of the patient and also the knowledge of the previous state of this patient we would call it thyro-toxicosis.

Q. Due to the taking of thyroid?

A. Due to the taking of thyroid, and we advise for treatment absolute rest, sedatives, digitalis followed by quinidine sulphate.

Q. Did you make an examination of the heart, Doctor?

A. I recorded it. I mentioned that.

Q. And would you repeat again what you found with reference to the heart?

Mr. Gust: He has already testified to the blood pressure and pulse.

A. I had thorough studies made of the patient. I continued seeing the patient off and on. I had the patient rest and take digitalis and then we gave the patient quinidine sulphate and small doses of Pheno-barbital as a sedative. On October 24th I had an electro-cardiograph study made. Of course I did not make it myself. I referred her to the Electro-cardiograph station. Is it permissible to read the findings of that?

Mr. Gust: I object to that. I don't think that is a proper way to prove that subject matter.

Examiner Norwood: I don't know of any other way to prove it. It is the conclusions made from his investigation.

Mr. Gust: He is talking about an electro-cardiograph made by another physician or technician and it is clearly hearsay coming from him. It is to be produced at all it must come from the physician or technician who did the electro-cardiograph.

Examiner Norwood: What do you say?

Mr. Michael: Mr. Examiner, may I speak on that subject?

Examiner Norwood: Yes.



Mr. Michael: This examination that the Doctor has made was a part of the history of the case upon which he based his treatment, and he surely may give the result of this test, even though it were made by some one else, as is customary in such cases.

Examiner Norwood: Do you have that laboratory report?

A. Yes.

Examiner Norwood: You can put the laboratory report in evidence.

Mr. Gust: No, your Honor, I object to the laboratory report unless it is put in evidence by the man who made it. It is clearly hearsay in his hands.

Examiner Norwood: He can testify to the fact that he had this examination made. He furnished the data and in the due course of the practice of his profession, he sent this patient to the laboratory and here is what he received in reply. He can show that came from somewhere else.

Mr. Gust: If your Honor please, that is clearly hearsay in his hands. All he knows about it is what has been told him, either orally or in writing.

Examiner Norwood: It is the report.

Mr. Gust: That is hearsay from him. I might as well put it in.

Examiner Norwood: They can put the report in evidence itself, but I shall sustain the objection as to his giving verbally what is contained in the report.

Mr. Gust: I take an exception to that ruling.

Examiner Norwood: I sustain the objection.

Mr. Gust: Not to the report.

Examiner Norwood: He may put that report in.

Mr. Gust: You say he may not?

Examiner Norwood: He may put the laboratory report

in, after he lays the ground by showing he furnished the data.

Mr. Gust: Your Honor didn't sustain my objection then. My objection is he shall not be permitted to put it in.

Examiner Norwood: I sustained it in part, and the respondent has the benefit of an exception.

Mr. Gust: All right.

Q. Was that a reputable institution that made that report?

Mr. Gust: I object to that as a conclusion.

Examiner Norwood: Overruled.

A. It is a reputable laboratory and it is the one that I always send my patients to.

Q. Do you know the name of the individual that made the report?

A. Dr. R. Berman.

Q. Do you have that with you, Doctor, that report?

A. Yes, I have it.

Mr. Hornibrook: May I have it?

A. Yes.

Mr. Hornibrook: May this be marked for identification as Commission's Exhibits 46-A and 46-B?

Examiner Norwood: Yes.

(The papers referred to were marked "Commission's Exhibits 46-A and 46-B for identification.")

Q. What are Commission's Exhibits 46-A and 46-B for identification, Doctor?

A. It is a tracing of the heart which is known as an electro-cardiograph, and a report made by the physician who interprets and reads this report, and the report of the physician.

Mr. Hornibrook: We offer that in evidence.

Mr. Gust: I object to it, if the Court please, as not having been properly identified, being purely incompetent

and hearsay from this witness. There has been no competent testimony introduced that this is an electro-cardiograph of Mrs. Skardarasy's heart. Nobody who knows that has taken the stand. I have no opportunity or right under this method of procedure to cross-examine the person who ought to be produced to identify it. Therefore I object to it.

Examiner Norwood: Off the record.

(Discussion off the record.)

Examiner Norwood: Objection overruled, and the papers previously marked Commission's Exhibits 46-A and 46-B for identification are received in evidence as Commission's Exhibits 46-A and 46-B.

(The papers previously marked Commission's Exhibits 46-A and 46-B for identification were received in evidence, Witness Rosenman.)

Q. Doctor, in making your diagnosis as that of thyrotoxicosis, were you guided only by the patient's history of prolonged thyroid medication and clinical findings and signs and symptoms which resembled those of hyperthyroidism but also by your knowledge of the patient's physical condition which was known to you previous to this examination.

Mr. Gust: I object to that as being leading and suggestive.

Examiner Norwood: Objection sustained.

Q. What did you take into account when you made your diagnosis, Doctor, if that satisfies counsel?

Mr. Gust: It doesn't satisfy me.

Examiner Norwood: Go ahead.

A. A physician makes a diagnosis based, always basing this first of all upon the patient's history.

Examiner Norwood: He is asking you what you did. State what you considered in making this diagnosis.

A. Well, that is just what I was leading to, your Honor.

Examiner Norwood: All right.

A. I made my diagnosis of this patient based first of all upon the knowledge of this particular individual, of whom I had occasion to see and study for a good number of years. Secondly, the history obtained from the patient at the time she was in my office at the last visit, and finally the examination that I made of her.

The examination gave unmistakable signs of evidence of thyro-toxicosis. There were the heart signs of pulsus perpetuus irregularis and alternans. There were the signs of a tremor, fine and coarse tremor of the hands and fingers and the general appearance of the patient, myosthenia, all those suggested a thyro-toxicosis.

Q. What heart conditions did you find?

A. Well, at the time I examined her her heart was irregular. There were numerous pulsations which were not transmitted to the radial pulse, which was unmistakable evidence that there was not true regularity of pulsation, and there is evidence also by the type of blood pressure findings that the rate would pass through, the force, rather, of the heart beats would go through at different force, and also the different rate of the pulse, and unmistakable evidence of cardiac weakness.

Q. Are those symptoms of thyro-toxicosis?

A. These are some of the symptoms of thyro-toxicosis, yes.

Q. Have you made examinations since the initial one?

A. I have had frequent occasions to see the patient at her home and then on two occasions at my office. I have here records of the times I saw the patient at the house. I saw her eleven times at the house and twice in my office.

Q. Did you put her to bed?

A. Absolute rest. To my knowledge she was in bed until about the middle or the end, I think, the middle or end of February.

Q. That is, from the time you were first called, September 18th, was it?

A. No, sir; September 30th.

Q. September 30th until what time?

A. Until about the end of February. I am not sure about the exact date.

Q. After February, the end of February, did you make other examinations?

A. I saw her at the house once or twice during the month of March, and I saw her the last time last Saturday.

Q. What was her condition at that time?

A. Last Saturday there was considerable improvement so far as the regularity of her heart rate, but she had signs of a mitral lesion of one of the valves.

Q. Do you attribute these conditions to the taking of thyroid?

A. That valvular lesion directly. I would have to explain how.

Q. Go ahead.

A. I know Mrs. Skardarasy, and I never found in past years or in previous years any evidence of any heart lesion. In fact, I always assured her her heart was in very good condition.

However, during the last few months I detected a mitral lesion which I considered as a functional, not an organic cause, because during the years that I have known her no infectious diseases have occurred which would account for her valvular disease, and with this condition of the heart as it has developed, and as it appeared to me the first time I saw her, and judging by her response to effort during those few months and also during the last time I saw her; also judging by this report of the electro-cardiograph and other signs as precautional signs, she had dilatation of the sides of the heart. I consider this lesion as due



to a dilatation rather than destruction of the valve, because if it had been due to destruction of the valve, that lesion would have existed prior to this instance and it has not at any time to my knowledge been present. Furthermore, no history of infectious diseases has occurred during that period of time which would perhaps suggest the possibility of an infectious type of condition which would produce this and therefore I feel that this murmur is due primarily to dilatation of the heart muscle.

Q. Caused by the taking of thyroid?

A. To my mind, undoubtedly. I have no other reason.

Q. Thyroid does produce that effect upon the heart when it is taken in too great doses?

A. The effect of thyroid on the heart is to first over-stimulate it, stimulate a heart. Thyroid as a drug stimulates all of the tissues of the body, increases metabolism and makes those tissues,—not only stimulates indirectly, but directly, because oxidation is increased a great deal and the tissues have to keep apace with that.

Furthermore, thyroid stimulating the nervous system, being one of the sympathetic stimulants, it stimulates the heart rate, and therefore makes the heart over-active, and it is this over-activity of the heart that in the course of time produces this condition that I mentioned, namely, a dilatation, a weakness of the heart muscle, and interfering with even the nerve conditioning apparatus of the heart, as shown in conditions of hyper-thyroidism, known as goitre.

Examiner Norwood: When the tissues are more active does that put more work on the heart?

A. It puts more work on the heart, especially, your Honor,—one has to consider the time when it is being done—When this occurs in an old individual where response to effort is great. Where recuperative powers are great,

the damage may not be so marked. However, when this is brought upon a heart which is already, you might say, in a state of recession, like a person past forty, where there might be some vascular changes going on, imperceptible as they may be, but perceptible enough, the effects may be very great.

Q. You wouldn't say then, Doctor, that the desiccated thyroid first acts on the fatty tissue before it affects the other tissues?

A. The thyroid practically affects every tissue, because every tissue partakes of the benefit of excess oxidation.

Q. That would be true of desiccated thyroid?

A. Thyroid in any form.

Q. What was her condition prior to last June, testifying now from your examinations of her?

A. Well, I haven't had occasion to take care of Mrs. Skardarasý for some time, but I had occasion to be at her home about six months previous to this, having taken care at that time of her son, who sustained an injury, and I saw her several times and there was no complaint. Therefore, I took it for granted she was enjoying good health.

Q. What was her appearance?

A. Good.

Q. What was the condition the last time you examined her prior to last June?

Mr. Gust: Let us find out when that was first, if the Court please.

Q. When was that?

A. I have no recollection to give dates, but I would say within a year. Very good.

Examiner Norwood: That is a year before you made this examination?

A. Exactly.

Q. Was there any indication of a heart ailment at that time?

A. No.

Q. Doctor, basing your testimony upon your experience in the use of desiccated thyroid, clinical and otherwise, and your study of the literature upon its therapeutic value and effect, I will ask you if in your opinion it is safe for the laity to administer desiccated thyroid to themselves in dosages of one-half grain four times a day for a period of sixty to ninety days, without an examination, direction and advice of a competent physician?

Mr. Gust: I object to that as purely not rebuttal. It is subject matter the Government went into in chief.

Examiner Norwood: Will you read the question?

(Question read.)

Examiner Norwood: Objection overruled.

A. I would say not only it is unsafe for the laity, but it is not even safe for the physician to dispense thyroid unless he has thoroughly familiarized himself with the subject and has thoroughly studied his patient.

Q. From your experience, Doctor, and your reading and study of the subject, what is the cause, generally the cause of obesity?

Mr. Gust: Same objection; no rebuttal about this, if your Honor please.

Examiner Norwood: Objection overruled.

A. When we speak about obesity, we must, in order to answer the question—I will have to preface this. Obesity we must understand is not one type. We must understand obesity, one type of which is a true morbidity anatomical morbidity of the body whereby the utilization of foods taken by the body and the conversion of these foods through oxidation and absorption into energy and body heat, is not in balance, is one type, and the other type is a

mere overweight, which is also known as over alimentation, also known as obesity, which is not obesity. By obesity we often understand a true morbidity, in other words, a distinct entity in medicine, and the other is a bad habit.

Now, obesity does not necessarily come because of thyroid disease or a failure of thyroid to act, because we find quite often individuals that have over-active thyroids and they are fat. We find patients that have hyper-thyroidism at times, and they have excessive weight, and I can demonstrate that in my own practice.

Q. You have had those patients?

A. Yes, because we have functional states of hyper-thyroidism that are not true states. Therefore, it would be very dangerous to make this statement that all individuals that have hyper-thyroidism are lean, because we have to study that individual, whether it is hyper-thyroidism due to a primary over-active thyroid gland, or due to functional hyper-thyroidism, and therefore it is only temporary.

Q. Could you give us an opinion, Doctor, based on your experience and your reading as to what percentage of the cases of obesity are caused from over-eating and what percentage is caused from glandular defects, such as hypo-thyroidism?

A. I am sorry. I am unable to give you statistical figures based upon a percentage, but I can say the majority of individuals that present themselves to my office and have obesity are not afflicted with hypo-thyroidism. They are obese because they eat too much. They are obese because the ratio between expenditure of energy and the intake of food, which is potential energy, is not the same. In other words, they eat more than they expend.

Q. That is not hypo-thyroidism. Now, Doctor, what do you have to say as to this: Is it possible for some people who

are normal people to take large doses of thyroid, not large doses, but a dose of thyroid and yet not necessarily have a bad effect, say one dose?

A. Well, thyroid as I said before, is a dangerous drug. It always has effects, and the only time thyroid has no effect is when it has failed to be absorbed, and that has been known. Certain individuals will take as much as ten grains of thyroid, or fifteen grains of thyroid, and have no appreciable effect, and the only explanation that has been given by Plumber and others is that the thyroid is not absorbed in the intestinal tract, but whenever it is absorbed, or utilized it is always deleterious, if taken in quantities more than the body requires.

I would like to mention one type which is very much overlooked, the type of individual that has a small thyroid gland. The basal metabolic rate in that individual is below normal, and the Doctor may jump to quick conclusions and feed the patient thyroid, and after ten or fifteen days he develops a state of hyper-thyroidism, from which the patient does not recover. Careful study will indicate this patient has had too much in the arrested stage, and taken over fifteen days it stimulates and once the thyroid has started to function it never ceases until it is removed.

As I said before, it is not only dangerous to dispense thyroid by the lay person himself, but also the physician should take this into account and study the case very carefully.

Q. What would you say as to the harmful effect.

A. That is very little known, but some observers have found out the effect is two fold; produces a recession in the activity of the thyroid gland, sometimes. At times, on the other hand the thyroid is able to assimilate thyroid in its gland and dispense it and produce this hyperthyroid state in the individual.



Q. Would you elaborate upon the dangers of taking thyroid, Doctor?

A. The danger in the first place is to stimulate the arrested gland to activity and produce a permanent state of hyper-thyroidism, in other words a hyper-thyroidism person primarily so far as the function of the gland is concerned at subsequent dates.

The next danger of thyroid consists in over stimulating certain tissues, which because they have been in an arrested state or a hypo-function type of state, and because of having been in a weakened physiological condition they become over-active. Organs like the heart and the nervous system will become damaged, and in case of the heart perhaps permanently so. The effect of thyroid is even shown on the kidney through an increase of protein metabolism, producing a state of over-activity upon the kidneys.

Q. Would you say that there is greater danger in the case of a woman in the course of pregnancy?

A. Well, that has to be again a little bit elaborated, why the conception is in pregnancy thyroid is dangerous.

Q. Go ahead.

A. The glands, the internal glands are ductless glands, as they are known, and are divided into two groups. Some of them are sympathetic and some of them antagonistic. The thyroid and ovaries in a woman happen to be antagonistic, and where we have a hypo-functional ovary there is a hypo-functional thyroid. During pregnancy the ovaries are in an arrested state, and very often during pregnancy, there are thyroid hemorrhages and it is because of this that the concept has arisen that it is dangerous to give thyroid in pregnancy. Of course, we do at times give small doses of thyroid in pregnancy because we treat the fetus this way, but we have to be very guarded in giving excess doses, because the heart in pregnancy is doing an extra

work, the kidneys, the liver, and I have not mentioned before that one of the beneficial effects of thyroid on the body is to diminish the function of the liver, that is the storage, which in pregnancy is very important; hence an over-dosage of thyroid in pregnancy is by far more serious than in the non-pregnant woman.

Examiner Norwood: We will recess for five minutes.

(Recess)

Examiner Norwood: The hearing will come to order.

Q. (By Mr. Hornibrook): Doctor, in your opinion, what is the proper method for the treatment of obesity?

A. In the first place it is to make a careful study of the patient, find out what the cause of obesity is, and classify it as to its type and then having found out the type of obesity, if it is a type because of over-alimentation and diet, and then, of course, if you find it is of an endogenous type of obesity, hypo-thyroidism, without association of any other deficiency, then we may use small doses of thyroid, because the obesity then is merely one symptom of a complex picture. Sometimes we find that an obese is associated with the hypo-kinetic type in man. We have to correct this by medication. But, obesity due to hypo-thyroidism, primarily in the majority of instances, if you go to the extreme, would be known as a myxedema, which are true types, primary types of hypo-thyroidism. Those cases have to be treated with thyroid, but thyroid then is not the only thing in the treatment. You have to consider the patient as a whole, and treat them not only for hypo-thyroidism, but treat the patient for a group of symptoms.

Q. Doctor, do all modern physicians use thyroid in the treatment of obesity?

A. I don't think that thyroid is used at all, unless, as I mentioned before, we had a case of myxedema, or a case of true hypo-thyroidism.

Q. Which are very small in number?

A. In proportion, very small.

Q. Then you would say that the use of thyroid is not best suited to the multitude who are afflicted with obesity?

A. I would say that thyroid is not suited at all, unless you have special training in the identification of the type of patient.

Q. Does thyroid stimulate the thyroid gland?

A. The thyroid, as I already mentioned before, would have a tendency in a normal thyroid to produce a recessive activity, but in a thyroid gland that is potentially an abnormal thyroid, like in the arrested type of thyroid, thyroid would produce a true thyroid.

Q. If it is subnormal.

A. If the thyroid is not functioning at all.

Q. Sub-normal?

A. Yes. Well, of course, then we have to consider whether it is a primary sub-normal or secondary, because you can have a primary sub-normal thyroid, being in the class of myxedema type. We use thyroid, but if it is a functional hypo-thyroidism, it would be very erroneous to give thyroid.

Examiner Norwood: In the case where it is primarily given, does it stimulate and make more active the thyroid gland?

A. It does not directly.

Examiner Norwood: Not directly.

A. Not directly. In states of hypo-thyroidism, very often the thyroid is lessening, because first of all physiologically, there is a compensatory reaction, as a person recovering from pneumonia, or a lung case, in which the thyroid is in a recessive stage. Why? Because it has over-expended itself during the long period of time, and nature or the body forces, whatever you may call it, are trying to

adjust themselves and trying to operate on a lower basis, and the thyroid then does not function as much. It would be very dangerous to stimulate a thyroid at that time.

Examiner Norwood: But if you give the patient desiccated thyroid it would stimulate the action of the thyroid gland, would it?

A. It would stimulate the tissues, which would be very wrong, because the tissues have to be rested instead of over-stimulated. I would mention tuberculosis as another instance. Very often in tuberculosis, we find patients running a low thyroid. Again it is very important that they run a low basal rate, because they want to have the lungs less expanded. We want them to take in less oxygen so as to give them a chance to rest, and the same thing applies in heart conditions. Some glands will be stimulated and some will not.

Q. Then desiccated thyroid, is it not a fact, Doctor, takes the place of the thyroid gland in that it promotes oxidation in itself?

A. It does.

Q. Now, take a table such as the insurance companies get out purporting to show the average weights of people compiled from taking thousands upon thousands of people and then taking their weight and striking an average, and setting forth that a person five feet seven his normal weight is so and so, and five foot eight his normal weight is so and so, and so on, is that a reliable way of determining whether a person is obese?

A. I would say these tables are only based on the average, and in as much as we all are very often out of the average it would be very dangerous to go by tables, for we know individuals as a whole are divided into two groups. When I say two, I don't mean only two. There are other

groups, but in reference to weight and height we have two types. I wouldn't say one type is below weight and the other above weight. They belong to a special type that might be normal for them. Tables would only be correct to consult if you find a progression of events. With an individual that keeps on gaining one week after another, and keeps on progressively gaining, I would say he is stepping out of his own type, perhaps, and because of some habit he allows himself to gain too much, and the same thing applies to the one that is losing weight. If he keeps on losing weight progressively, then he is stepping out of his own sphere. That is where the danger lies in merely looking at a table and saying, you are over weight and you have to reduce ten or fifteen pounds. No. We must study our patients. It is equally wrong to try and build them up and give them more weight because they belong to a very definite type, but when causes exist for reduction or for gaining, that is an entirely different story. That is why again the physician has to study those cases. Tables are very wrong.

Q. Doctor, do you ever give thyroid without subjecting your patient to a metabolic test of his rate?

A. Often metabolic tests are not accurate in their interpretation.

Mr. Gust: If the Court please, that does not answer the question.

A. No, I would not.

Q. How do you treat obesity, Doctor?

A. As I have already stated before, I first study my patient, find out if there are any causes for that obesity. If there are, I remove them. By that I mean alimentation. Very often a person will not over-aliment himself, that is, for that particular type of an individual, so far as weight



is concerned, but his habits of expending energy are wrong. He leads a sedentary life. We take usually the basal requirements of that individual and add or subtract. If it is obesity, naturally we subtract. If it takes more than his expenditure of energy and if he is a sedentary individual, I allow him a basal rate of plus 30 per cent for sedentary life. If it is 25,000 calories we calculate what 20 per cent would be of that, and subtract. This is the most important way of treating obesity.

Q. That is to say, by diet.

A. By diet.

Q. Do you have an apparatus for taking the metabolic rate?

A. Yes, sir; I have had one for the last eleven years.

Q. Do you require the patient to return from time to time for observation?

A. We do.

Q. Is that true when you give thyroid for any cause?

A. Especially when we give thyroid. We never prescribe thyroid for that reason. We do not prescribe thyroid for fear they will have it duplicated in the drug store. We dispense thyroid and never dispense them any more than two weeks dosages.

Q. You said in your previous testimony, as I recall it, that thyroid was more apt to be deleterious after the patient had reached the age of 40 and older. Is it not also dangerous to take by the young without the examination and advice and direction of a physician?

A. Thyroid is always dangerous to take.

Q. Is it not a fact that some people are super-sensitive to thyroid?

A. Those individuals that belong to the sympathetic group are over-sensitive to thyroid.

Q. And it is highly dangerous for them to take it?

A. More so than the vagotomy type of individual.

Q. What is the smallest dosage of thyroid in your experience that you have seen to have a bad effect upon a person?

A. I have a prominent attorney in this city who takes one-tenth of a grain of thyroid over a three weeks' period, and he has palpitation and runs a basal metabolic rate of minus 17, which is 7 per cent below the normal, yet one-tenth of a grain of thyroid taken over a three weeks' period causes palpitation, and the patient being intelligent says I will have to discontinue it.

Q. One-tenth of a grain a day?

A. Three times a day.

Examiner Norwood: Doctor, I would like for you to mention a little plainer as to the effect in this case of thyroid on the thyroid gland. Now, suppose you have a case of a completely inactive thyroid gland, and suppose you give one grain of desiccated thyroid, and suppose you designate the increase of metabolism by "X." Now would that increase, would the increase with that "X" be the same as where you gave the same amount, one grain in this case of desiccated thyroid to a person with an active gland? Would "X" be the same? Would the increase from the taking of the one grain be the same?

A. It would be greater for the time being.

Examiner Norwood: In the latter case?

A. Where the gland is already active.

Examiner Norwood: Would that be true due to the direct stimulation of the thyroid gland from the desiccated thyroid.

A. Well, I thought I mentioned that before, that you have to consider two instances.

Examiner Norwood: But in any instance would it?

A. One has to be guided. It is very difficult to make this statement absolute. There are certain thyroid glands which are already in an arrested state. Those glands are materially worked by thyroid. Why? Because very often the arrested stage is a forerunner of that gland.

Examiner Norwood: Whether it makes it better or worse, would it increase the secretions in the thyroid gland so that the gland itself would then add to the metabolic rate?

A. With one type of gland, yes.

Examiner Norwood: It would.

A. That is, in one type.

Examiner Norwood: Is that the most usual type?

A. This is the type of gland that would be aroused. It is not the most usual, but it is a type of gland.

Examiner Norwood: And in other conditions the "X" would be the same, whether there were a defective gland or a completely active one.

A. Yes.

Q. Doctor, does the desiccated thyroid stimulate the thyroid gland, or does it perform the functions of the thyroid gland?

A. It performs the function of the thyroid gland.

Mr. Hornibrook: I think that is all.

Examiner Norwood: Cross-examine.

### Cross-Examination

By Mr. Gust:

Q. Doctor, you say that you have used thyroid in your own practice for a good many years.

A. I did.

Q. And what ailments do you treat with thyroid medication?

A. What ailments?

Q. Yes.

A. Primarily hypo-thyroidism.

Q. And you treat hypo-thyroid people who have associated obesity, I take it, too, at times.

A. I am not treating them for the obesity primarily. I am treating them for a state of hypo-thyroidism.

Q. What dosages of thyroid have you employed in your practice?

A. I use very small dosages, I start with one-tenth of a grain.

Q. From one-tenth up to what?

A. Never more than a half grain three times a day.

Q. What is the U. S. P. dosage?

A. One grain.

Q. How long has it been one grain?

A. I can't tell.

Q. Was it more than that in previous issues of the U. S. P.?

A. I couldn't tell you.

Q. Now, I take it, Doctor, when a patient comes to your office you make an office record of the treatment?

A. Exactly.

Q. And that is the record you read from this morning?

A. Yes.

Q. Have you any record of previously treating Mrs. Skardarasy?

A. I have; not with me.

Q. You didn't bring it with you?

A. No.

Q. What did you treat her for?

A. It was for examinations. I gave her practically no treatment.

Q. When was that?

A. Over a period of ten years.

Q. How many of them?

A. Well, I couldn't tell you. I had occasion to see Mrs. Skardarasy off and on during that period of time.

Q. But, you never treated her for any ailment during that period of time?

A. No.

Q. Now, when she came to you on September 30, 1935, was it?

A. Yes, exactly.

Q. Did you take her basal metabolic rate?

A. I did not.

Q. What is your usual treatment for thyro-toxicosis?

A. Rest in bed.

Q. Is that all?

A. Absolute rest in bed, sedatives, diet and medication.

Q. What other medication?

A. We use digitalis for the decompensated heart, and for the irregular pulsation we use quinidine sulphate.

Q. Is that all the medication you use for thyro-toxicosis?

A. Yes.

Q. Is that the accepted method, as you understand it?

A. I consider it the accepted method. Of course, we use iodine in addition to that, but we have to be very careful.

Q. Do you use Ingol's Solution?

A. Not always.

Q. But you sometimes use iodine.

A. It is very dangerous.

Q. Did you use either of them on this lady?

A. Not in her case, for very good reasons.

Q. You told us what you used in her case?



A. Yes, I did. If you ask my reasons why I didn't use anything else, I will tell you.

Q. How do you treat a mitral lesion of the heart?

A. If you ask me some I will tell you the classification. Some mitral lesions we don't do anything.

Q. How do you make a differential diagnosis between an organic mitral lesion and some other?

A. How do we make the diagnosis? First of all, by personal history. History helps us a lot. Secondly, we test the heart and use digitalis, and if we find the heart's responded to treatment, usually the mitral lesion disappears. Sometimes you have a mitral lesion due to anemia and it disappears when the anemia disappears. Sometimes when we have organic mitral lesion we only treat that when the rest of the body shows decomposition of the heart. We never treat valvular lesion only as far as the entire heart is thereby affected, and the entire body shows symptoms and signs of decomposition of that heart.

Q. When did you first discover that this lady—

A. Mrs. Skardarasy?

Q. Skardarasy?

A. That is it.

Q. Had a mitral lesion?

A. Not before she was in bed, and the heart was quieted down.

Q. When was that? I am just asking you for dates.

A. I couldn't tell you the exact date. It was some time during the period of September 30th and January 1st.

Q. Sometime between September 30th and January 1st?

A. Exactly.

Q. That you discovered she had it.

A. Yes.

Q. Now, Doctor, I think you said if a person had an

adenomatous goitre the thyroid medication might flare it up; so to speak.

A. Not flare it up, because it has never flared up, but bring it into activity.

Q. Bring it into activity.

A. Yes.

Q. And a great many adenomatous goitres come into activity without thyroid.

A. Not usually during the first three and one-half decades of life.

Q. As a matter of fact, you sometimes use thyroid medication for the purpose of diagnosing an adenomatous condition.

A. I would not want to use it. It would be very dangerous. If I would have a guinea pig for a patient I would do it. Not the human being.

Q. Doctor, you said that in your opinion desiccated thyroid was unsafe for the laity to take without previous examination and observation by a physician.

A. I said it is unsafe not only without examination, but it is not safe for them to take without the control of a physician.

Q. A very competent physician?

A. Exactly.

Q. A man who understands thyroid very well.

A. Yes, sir.

Q. And after long experience.

A. Yes, sir.

Q. Not all physicians are competent to administer it then, is that right?

A. It is not up to me to classify them.

Q. No, but that would be your judgment about it, would it?

A. Well, I don't want to pronounce judgment on any other doctors. I am not here for that purpose.

Q. All right. I take it, Doctor, you feel that way about a good many other substances dispensed in the drug store.

A. Yes, I do.

Q. I take it you feel that same way about most proprietary or patent medicines.

A. Not I feel, but I have a thorough conviction. I have certain reasons and if you ask me more details I will tell you.

Q. I take it that Alkaseltzer is on your blacklist, is it?

A. I have reasons not to recommend it, unless I know what they are taking it for.

Q. In other words, it is unsafe for the laity to take Alkaseltzer without consulting a doctor.

A. I wouldn't say it is unsafe.

Q. Very unadvisable?

A. I would say it is not very often beneficial. Thyroid is not safe, but Alkaseltzer has no safety level.

Q. I take it, Doctor, that any drug that is not inert, that has a physiological action on the body may be deleterious to some individuals?

A. Well, Aspirin may be deleterious to some if they have a brain tumor. To allay the headache it would be deleterious, because the brain tumor will continue to grow.

Q. Do you mean to say the Aspirin would have any effect on promoting the growth of the tumor?

A. No, I mean the Aspirin makes them insensitive to the effect of the tumor, removes the headache, which is a very important sign and symptom to tell the individual there is something wrong.

Q. Then the deleterious effect of Aspirin is only that it dulls the pain that might otherwise be a danger signal?

A. Aspirin may also be dangerous to some people.

Q. Yes.

A. Possibly more than if he eats heavy and becomes obese.

Q. Some people have an idiosyncrasy for various drugs, do they?

A. Yes, and also foods.

Q. And also foods.

A. Exactly.

Q. And what do they experience?

A. They experience very unpleasant symptoms. Of course, if they take, we will say a drug like Hemotropin, which is used in kidney trouble, we have known instances where following the usage of Hemotropin in one day it produced Bright's Disease. It happened to be an irritant, hyper-sensitive to this particular drug, and individuals who have a hyper-sensitiveness to certain foods will experience unpleasant symptoms. They may have a violent attack of asthma, for instance, following a glass of milk. We are not going to condemn the milk, naturally.

Q. I take it that you have found that practically all drugs some people may have an idiosyncrasy for, is that true?

A. They may have an idiosyncrasy, but the drug itself is not pernicious.

Q. I am asking you about idiosyncracies for the moment.

A. Well, yes, that is true. That applies to foods, to odors, to anything.

Q. Yes. And you have given an example in the case of the drug known as Hemotropin?

A. Exactly.

Q. There are other examples.

A. Well, Aspirin I have known has produced palpita-

tion, heart palpitation in some patients, In fact, I have one patient who has acute sinusitis, and we use Aspirin, and we could not use it for him.

Q. He gets heart palpitations from using it?

A. Yes. After it wears off, it does not produce any lasting effect.

Q. Now did this lady, this patient give you a history of having lost any weight while she took Thyroid?

A. I think about 15 pounds, if I am correct. I believe about 15 pounds. In fact, I have on my record there the weight at the office as compared with what her weight was, and her usual weight was 170 pounds.

Q. May I see the thing you are examining?

A. Yes.

Q. I don't find on here any place, Doctor, where you refer to the fact that she has a heart lesion or mitral lesion.

A. No.

Q. All right. That is all I want to know.

A. I would like to explain it.

Examiner Norwood: You may.

Q. Just a minute. I will ask you some more questions. Do you have any record in your office where you noted that down?

A. No.

Mr. Gust: I think that is all.

### Redirect Examination

By Mr. Hornibrook:

Q. Doctor, you said you would like to explain why you did not put anything down about a lesion in that report.

A. Yes. In the first place, when a heart beats 120, even if it is leaking, you never hear it. Heart cases where they have the most severe type of valvular disease, like mitral



stenosis, when they beat so fast you cannot hear them. That is the reason why I could not say Mrs. Skardarasy had a mitral regurgitation on my visit of September 30th. I do know her heart was all right before, because I examined her time and again, and when I discovered there was a mitral lesion, when she was in bed and her heart rested, I would not put it on my record as an organic lesion, because I believe this is functional, due to heart dilatation, and after I convince myself a year from now the murmur is still there I will put it in as a permanent effect. That is the reason it is not on my record now.

Mr. Hornibrook: That is all.

#### Recross Examination

By Mr. Gust:

Q. Doctor, how many times did you examine Mrs. Skardarasy's heart prior to September?

A. Every time I visited her. I couldn't tell you how many times. I must have on numerous occasions during the past ten years, previous to this present case.

Q. You were not treating her for any ailment?

A. No.

Q. And still you continually examined her heart?

A. When she had a cold and I was called to the house to see her, we always examine our patients. I did.

Q. You examined her heart many times?

A. On many occasions.

Q. Doctor, had Mrs. Skardarasy paid you any money before she got this settlement from the Raladam Company?

A. Of course, I was charging her.

Q. As a matter of fact, she was indebted to you for your services?

A. A small amount.

Q. And you were paid out of the settlement that was made.

A. No, I was not paid out of the settlement. Mrs. Skardarasy still owes me a former bill.

Q. She does?

A. Exactly.

Q. Did you direct her to Mr. Rommeck, the attorney?

A. I did not direct her. She asked me how he was.

Q. And you told her to go to him?

A. No, not at all.

Q. You suggested that was a place she could go?

A. I did not suggest at all.

Q. You furnished the name?

A. Well, not necessarily.

Q. Well, did you or didn't you?

A. I did not.

Q. You did not give her Mr. Rommeck's name.

A. Mr. Skardarasy knew the name before.

Q. I see. Did you know it too?

A. Of course, he is my patient.

Q. I see.

A. I have known him for the last eleven years.

Q. Have you been an expert witness for him on several cases?

A. Never.

Q. Never have?

A. I have one case now pending.

Q. In which Mr. Rommeck started suit?

A. It is an injury case.

Mr. Gust: All right. That is all.

Mr. Hornibrook: That is all.

(The witness was excused.)

Mr. Michael: There is one matter I wanted to clear up with Mrs. Skardarasy.

Examiner Norwood: Please resume the stand, Mrs. Skardarasy.

ALICE SKARDARASY, called as a witness for the Commission, having been previously duly sworn, testified further as follows:

Direct Examination

By Mr. Michael:

Q. Mrs. Skardarasy, during the time that you took this Marmola, as you have testified, did you take any other medicine or drug?

A. No, not just what the doctor prescribed.

Q. Not till after the Doctor came?

A. Not anything else, no.

Q. Not until after September 30th.

A. That is right.

Q. Did you take any thyroid in any form during that period?

A. No, sir.

Q. Except the Marmola?

A. Yes, that is all.

Mr. Michael: That is all.

Mr. Gust: No questions.

(The witness was excused.)

Examiner Norwood: We will recess now until two o'clock.

## AFTERNOON SESSION

2:00 oclock p. m.

Examiner Norwood: The hearing will come to order. Call your next witness, gentlemen.

Mr. Hornibrook: I will call Mr. Carey.

F. A. CAREY, called as a witness for the Commission, being first duly sworn, testified as follows:

## Direct Examination

By Mr. Hornibrook:

Examiner Norwood: Have you a subpoena?

A. Yes.

Q. (By Mr. Hornibrook): Where do you reside, Mr. Carey?

A. Birmingham, Michigan.

Q. And what is your occupation?

A. Lawyer.

Q. With what firm?

A. Member of the firm of Goodenough, Voorhies, Long & Ryan.

Q. In Detroit?

A. In Detroit.

Q. You practice your profession here?

A. Yes.

Q. Were you practicing in 1930?

A. Yes.

Q. In 1930 did you meet a Mrs. Nettie Gigstead?

A. Yes.

Mr. Gust: I object to that, if the Court please, as not be-

ing proper rebuttal and not rebutting anything the respondent put in his chief case.

Mr. Hornibrook: In this particular case, Mr. Examiner—  
Examiner Norwood: We have already let in this testimony.

Mr. Gust: I have the same exception to the entire line of testimony.

Examiner Norwood: Objection overruled.

Q. She was the Texas woman, was she not?

A. I know she left for Texas soon after I met her, and my recollection is that was her home state.

Q. You don't know her present address?

A. No, I don't.

Q. Did you perform any services for her?

A. Yes, I did.

Q. Did you handle the claim against the Raladam Company for her?

A. Yes.

Q. For alleged injuries due to the taking of Marmola?

Mr. Gust: I object to that, if your Honor please, as being a privilege between this woman and the witness. In addition to that objection I want the objection that I already have made.

Examiner Norwood: Is this the attorney for the witness who testified this morning?

Mr. Gust: No.

Mr. Hornibrook: This is a different case. This is the attorney for the woman in Texas, and now counsel on the other side is objecting to his testimony.

Examiner Norwood: Because it is privileged.

Mr. Gust: Mr. Examiner, don't understand this is the attorney for the woman that was here this morning. It is another one.



Mr. Michael: This is the Texas case Mr. Hayes mentioned.

Examiner Norwood: This attorney may claim the privilege, if he wishes. If he does not claim it, I don't see that any one else can object.

A. Well; if you consider that to be a privileged communication why I feel I should claim the privilege.

Mr. Michael: I don't think it comes within that category.

Examiner Norwood: That is for you to decide. I shall overrule the objection and let him testify. Tell the facts.

Mr. Michael: No question has been asked him as to any communications, but merely the handling of the claim.

Mr. Gust: He has asked if he handled a claim for this woman on a particular matter. Obviously, the client is the one that discloses to the lawyer the nature of her claim, and when he asks that sort of a question he naturally invades the field of privilege. He has not shown this witness got any information about the subject matter except from the client.

Examiner Norwood: Objection overruled.

Q. Did you answer the question?

A. Yes.

Q. About what time did that association come about?

A. It was in the Spring of 1930 that I was consulted about it.

Q. Did you carry on some negotiations with some one as to the settlement of this claim?

A. I did.

Q. With whom?

A. I first sent a letter to the Raladam Company. Then the attorneys representing the Raladam Company communicated with me by letter or telephone.

Q. Who were they?

A. The firm of Stevenson, Butzel, Eaman & Long. Mr. Gust is the one I talked to.

Q. Were all of those negotiations conducted with Mr. Gust?

A. They were.

Q. And they continued for how long a time?

A. We started suit in October of 1930, commenced negotiations, I think, in April of 1930, and the settlement was arranged some time in January of 1931.

Q. Did you participate in that settlement?

A. I did.

Q. Was there any money paid in settlement?

A. There was.

Q. How much?

Mr. Gust: That is objected to as being wholly incompetent, irrelevant and immaterial.

Examiner Norwood: Objection overruled.

A. \$2000.

Q. Was the case dismissed?

A. Why, I suppose so. I think at the time settlement was made I signed a stipulation for dismissal of the suit. I didn't attend to having it dismissed, as I recall.

Q. Do you know whether Mrs. Gigstead was confined in a hospital?

A. By what I was told, not of my own knowledge.

Q. You have no knowledge of that except hearsay?

A. No.

Q. Do you have any knowledge of who paid the hospital bills?

A. Why, I was told who paid them, but I don't know whether Mrs. Gigstead told me or Mr. Gust, I wouldn't be sure who told me.

Q. Was it told in the presence of the woman?

Examiner Norwood: That is evidently hearsay.

Mr. Hornibrook: How is that?

Examiner Norwood: That is evidently hearsay.

Mr. Gust: Purely hearsay, if the Court please.

Examiner Norwood: Yes.

Mr. Michael: It wouldn't be hearsay if it was told by Mr. Gust or in the presence of him, representing the respondent. It would be an exception to the hearsay rule.

Mr. Gust: I think it is still hearsay.

Mr. Hornibrook: I think that is all.

#### Cross-examination

By Mr. Gust:

Q. Mr. Carey, do you recall obtaining a statement from Mrs. Gigstead and exhibiting it to me to the effect she had taken some five or six of these Marmola tablets five or six times a day?

Mr. Hornibrook: That is objected to. That is going into the merits of this case. This witness was put on the stand to clear up the vagueness of the witness Hayes who said that he thought that this case had been settled for \$25.00, but he was not sure.

Mr. Gust: He did not say Mrs. Gigstead. Nobody asked Mr. Hayes how much Mrs. Gigstead obtained.

Mr. Hornibrook: There were only two, and one was in 1931 and one last year.

Mr. Gust: I may have said that. I don't know.

Mr. Michael: One in Texas and one in Detroit.

Examiner Norwood: Read the question.

(Question read.)

Mr. Michael: It is not cross-examination.

Examiner Norwood: He can make him his own witness. He has got a right to reply to this testimony, but that is evidently hearsay.

Mr. Gust: Your Honor excludes it?

Examiner Norwood: I will sustain the objection.

Q. Do you recall that you obtained a statement of Mrs. Gigstead, exhibited it to me to the effect that she did not follow the directions on the Marmola package.

Mr. Hornibrook: Same objection.

Mr. Michael: In addition to the previous objection, it is not the best evidence.

Examiner Norwood: It is hearsay the same as the other.

Mr. Gust: I think it is in the same category as the other. I want to make the record, that is all.

Examiner Norwood: Have you any facts with regard to that that has come to your knowledge in this case in regard to the client following directions other than hearsay statements?

A. I don't know anything about it except what she said at the time, and it happened in 1930.

Examiner Norwood: Objection sustained.

Mr. Gust: That is all.

Mr. Hornibrook: That is all.

(The witness was excused.)

### STIPULATION

Mr. Gust: It is stipulated between counsel for the respondent and counsel for the Commission that if Dr. R. Berman was sworn as a witness in this proceeding he would testify that Commission's Exhibits 46-A and 46-B are correct statements and graphs of the condition of Mrs. Alice Skardarasy as of the date which they bear, and that the graph was made under his supervision and that the conclusions are his interpretations thereof.

This is subject to the right of the respondent to later call Dr. Berman for cross-examination with respect to said

exhibits and the contents thereof, at which time the Commission may also have such direct examination as counsel sees fit.

Mr. Hornibrook: That is all right.

Examiner Norwood: Gentlemen, it is understood then that Commission's Exhibits 46-A and 46-B are admitted in evidence for all purposes, is that correct?

Mr. Gust: That is all right.

Mr. Michael: Mr. Examiner, I would like to ask that the hearing be adjourned to be resumed at Ann Arbor, Michigan, Friday, April 10, 1936, at two o'clock P. M. Eastern Standard Time at the Library of the Simpson Memorial Institute for Medical Research on Observatory Street in Ann Arbor, just south of the University Hospital.

Examiner Norwood: The hearing will be adjourned until tomorrow to the time and place stated.

(Whereupon, at 2:50 o'clock P. M., April 9, 1936, the hearing in the above entitled matter was adjourned to the Library of the Simpson Memorial Institute for Medical Research, Ann Arbor, Michigan, April 10, 1936, at two o'clock P. M.)

Library of the Simpson Memorial Institute for Medical Research, Ann Arbor, Michigan, Friday, April 10, 1936.

Met pursuant to adjournment, 2:00 P. M.

Examiner Norwood: The hearing will come to order.

Pursuant to adjournment of yesterday, the hearing in this case is now convened in the library of the Simpson Memorial Institute for Medical Research, Ann Arbor, Michigan, at two o'clock P. M. The same appearances.

You may call your witness, gentlemen.

Mr. Michael: Doctor L. H. Newburgh.



DOCTOR L. H. NEWBURGH, called as a witness for the Commission, being first duly sworn, testified as follows:

Direct Examination

By Mr. Michael:

Q. Doctor Newburgh, what position do you hold at the present time?

A. My title is Professor of Clinical Investigation in the Department of Internal Medicine.

Q. Of what university?

A. Michigan.

Q. That is located at Ann Arbor?

A. It is.

Q. And the hospital is also located at Ann Arbor?

A. It is.

Q. Now, how long have you held that position?

A. Since 1922, I believe, maybe 1923.

Q. Is your work confined to any restricted subject?

A. No, my work consists of two major things. I teach routine clinical medicine and I study problems in the field of metabolism and nutrition.

Q. What is the nature of that study in metabolism and nutrition that you do?

A. It is based on the conception that the chemical processes in the body are abnormal in some respect.

Q. Is that laboratory work and experimentation?

A. Yes.

Q. Or what sort of work is it?

A. It is chiefly laboratory work, often with a patient as the subject, as the creature from which we obtain ma-

terial or as the subject to which we apply ideas that we have gained in the laboratory.

Q. Now, will you kindly give briefly an outline of your study and preparation for your present work.

A. Going back to high school?

Q. Yes, or to college.

A. Well, I went to college; A. B., Harvard Medical School, Internship Massachusetts General Hospital, and a year of graduate study at Vienna and Berlin; then physician on the staff of the Department of Internal Medicine at Harvard for four years and then here as Assistant Professor and finally Professor.

Q. Now, did your work in the study of problems in metabolism and nutrition include the treatment and supervision of patients?

A. To a very large extent.

Q. And will you just give us an idea of the extent?

A. The University Hospital has a diabetic clinic which devotes itself to the care of patients with diabetes mellitus, of which I had charge.

Then as a special service in the hospital, usually patients in this general field, called the diabetic, are sent to me, so that I have supervision of a miscellaneous group of people; many of whom are obese, some of whom have unusual chemical disturbances. These people are first studied by us until we think we understand the condition. In some cases, we have arrived at that place, and some instances we have not. When we think we have solved the problem we lay out a treatment and we turn that group of patients back to the general hospital, and the ambition being always to get enough information about some type of disease so that we can convert into general practice.

Q. Now, in your work have you studied and had ex-

perience with the use of thyroid, desiccated thyroid as a medication and its effect on the human body?

A. Yes, I have.

Q. And does your work, and has your study included a study and observation of the working of the thyroid gland and the effects of its secretion on the body?

A. Yes, to a very large extent.

Q. Now, Doctor, it has been testified in this case in effect that 99 per cent of the patients tested on the metabolic testing machine are hypo-thyroid. Is that a correct statement.

Mr. Gust: I object to that, if the Court please, as being an improper method of examination and not a correct statement of the testimony.

Examiner Norwood: I don't think the question is in the proper form. He can testify as to the percentage of these people who are hypo-thyroid, as shown by his experience. I don't think you should ask him whether or not the other testimony is true or not. I don't think it is necessary to refer to that other testimony.

Mr. Michael: Well, I did that merely to obviate any objection on the ground that it is not rebuttal.

Examiner Norwood: The objection is sustained as the question is in the present form.

Q. Doctor, basing your answer upon your experience and your study, what do you say as to whether or not a large percentage of obese people are hypo-thyroid?

A. Is that all right?

Examiner Norwood: Yes.

A. I would say that a very, very small percentage of obese people have any disturbance of the thyroid gland. I would base that statement more largely on the experience of very capable men, Walter Boothby at the Mayo Clinic,

who has made the best known study of basal-metabolism in all sorts of persons and is recognized, I think, as the most accurate person in that field, and his statistics, which, of course, anybody can see, show that the vast bulk of obese people have a normal basal metabolism. There are a few whose metabolism is below normal. There are an equal number whose metabolism is above normal.

Q. In the obese, you mean?

A. In the obese.

Q. Now, are you familiar with statistics that have been compiled by various authorities in this field as to the proportion of cases of obesity, that is, associated with hypothyroidism?

A. I just cited these statistics, which I know from personal experience are entirely reliable and is, if I remember the values correctly, 2 per cent.

Mr. Gust: I object to this as not being proper testimony. The Doctor is apparently quoting from some medical work which I don't think is proper.

Examiner Norwood: He can give his opinion as a scientific expert.

Mr. Gust: He has already done that.

Examiner Norwood: And his opinion and whether it is based upon his studies and the work of his contemporaries or any scientific work and experiments.

Mr. Gust: I will object to this as not being rebuttal testimony, on the same basis as I objected yesterday. I won't interrupt continually. I would like to have that objection understood.

Examiner Norwood: It is understood that your objection goes to all this testimony. The objection is overruled.

A. I can state it this way, so it will be satisfactory. My experience in this field, which is naturally very ex-

tensive, accords entirely with the experience of people for whom I have the greatest respect.

Q. What is your experience and your observation as to the general percentage of cases of obesity that are associated with hypo-thyroidism?

A. Less than 5 per cent, perhaps 2 per cent.

Q. Does your experience in that respect in giving that percentage coincide with that given by authorities in this field who have accumulated statistics?

Mr. Gust I object to that as not being a proper question.

Examiner Norwood: Objection overruled.

A. Did you say overruled?

Examiner Norwood: Yes, you can answer the question. Read the question to him.

(Question read.)

A. The reason I hesitate to answer is I am disturbed by the use of the word "authority." That is, authority on whose say-so.

Q. Well, confine your answer to what are considered outstanding authorities in the field.

A. Authorities in my opinion, or in somebody else's opinion?

Q. In regard to those that you consider authorities.

A. My answer is my experience accords entirely with their experience.

Q. Doctor, are you familiar with the operation of the metabolic testing machine?

A. Very familiar, indeed.

Q. Have you had extended experience in the operation of those machines?

A. I have.

Q. I wish you would state whether or not in your opinion the use of the metabolic testing machine is accurate when properly used?



A. Highly accurate.

Q. Is it true that many physicians are under the opinion that it is not exactly accurate?

A. I don't know. I can't answer that.

Q. Well, have you heard it stated by persons in the medical field?

Mr. Gust: Well, I object to that as being purely hearsay.

Examiner Norwood: I think we should get away from what other people say.

Mr. Michael: It is rebuttal.

Examiner Norwood: Except he can show that his opinion is based upon research and based upon his scientific studies and all that.

Mr. Michael: That was merely introductory to another question I was going to ask.

Examiner Norwood: Make it as his opinion, not as to what other authorities say. The other authorities are not here to be cross-examined.

Mr. Michael: I was not asking about authorities. I was just asking if he came in contact with that opinion, and I call your attention to the fact that several witnesses for the respondent testified that the metabolic testing machine was inaccurate and that they did not depend upon it and did not use it very much, because they thought it could be dispensed with as not being accurate, and I am directing this testimony to that situation.

Mr. Gust: Mr. Examiner, that is not a fair statement of the testimony. They did not say the machine was not accurate.

Examiner Norwood: Anyway, whether it is or not, this witness has experience and he testified that he found it accurate. Now, if you want to bring in some scientist who found it inaccurate, let them swear they found it so.

Q. Now, Doctor, is there a reason for some tests on this machine being inaccurate?

A. Yes, there are a number of reasons.

Q. What are they?

A. In the first place, it is a highly technical apparatus, which after the record has been made requires a certain amount of calculation. The individual may not know how to do the calculation. If he does not know how he may get an inaccurate result, and the machine itself, like any machine, may be out of order. If he is not entirely familiar with it he may not know it is out of order. There are a number of ways it can be out of order, the method as a clinical method not having been in use very long. In the beginning, very few people used it, except people who were highly trained in the field and were cautious and did it slowly, and then they did one or two patients a day and they got concordant results, and then the medical instrument manufacturers took up the idea, and for a period there was a flux of these things on the market, several of which I wouldn't think of using. I wouldn't depend upon them. Some of the manufacturers, experienced people, made excellent apparatus, and some of them were hoping to make some money. So that it depends on a number of things, whether the machine is a good machine, whether the operator knows how to run the machine and knows how to calculate his results.

Q. Doctor, approximately how many years has it been in your work at the University of Michigan in which you have had obese patients under your supervision and treatment?

A. Ever since I have been here. Ever since the fall of 1916.

Q. You were here a number of years before 1923 when you took your present position?

A. Yes, I came here as Assistant Professor and became an Associate Professor and a Professor, always doing the same thing, yes.

Q. I wish you would state generally how the number of these obese patients run that are here from month to month and year to year.

A. How many there are?

Q. Yes.

A. I don't think I know. One can find out with perfect accuracy by consulting the record room.

Q. Well, can you give a general number that will give an idea of the number that you treat or have treated?

A. Well, I would guess a hundred a year.

Q. Now, did these patients that you have treated for obesity or who had been treated under your supervision, Doctor, all of these years from 1916 that you have been here at the University, did those patients show the same general percentage of hypo-thyroids as you have stated as your opinion that exists among the obese?

A. I can answer that very definitely. I would say that year in and year out the opportunity to find an obese individual with hypo-thyroidism is exceedingly rare.

Q. Has it been your experience in these patients that have come to the University of Michigan that many of these obese persons had normal metabolism?

A. The vast majority of them have normal metabolism.

Q. Now, in your opinion, is obesity caused by hypo-thyroidism in the great majority of cases of obesity?

Mr. Gust: This has all been covered.

A. Never.

Mr. Gust: I object to that as having all been covered.

A. In my opinion it is never caused by hypo-thyroidism.

Q. What is it caused by in that great majority of cases?

A. I believe it is all caused by one thing, the disproportion between the inflow and outflow of energy, with emphasis on the inflow, more coming in than going out, or less going out than coming in, if you care to put it that way.

Q. In your opinion, Doctor, is desiccated thyroid indicated in the treatment of practically all cases of obesity?

A. In my opinion, it is a wrong form of treatment in nearly all cases.

Q. Does that also include, does your answer also include that percentage of cases which you said was small where hypo-thyroidism is present?

A. I think that any individual suffering from really established hypo-thyroidism should have the benefit of thyroid substance, regardless of what else is the matter with him or whether anything else is the matter with him.

Q. Would it apply to persons whose metabolic rate is merely slightly below normal?

A. No. Hypo-thyroidism is a definite condition for which there are means in making a diagnosis. After the diagnosis is substantiated then the remedy is evident, but merely determining the metabolic rate is not sufficient.

Q. Well, if a machine would show a low metabolic rate, would that be sufficient in your opinion to warrant the administration of thyroid?

A. No, because there are other causes that produce low metabolic rates.

Q. What treatment do you use in the treatment of obesity?

A. Education, with restriction of food in the sense of calories. I try to correct a bad habit.

Examiner Norwood: What other things do you deter-

mine in order to diagnose hypo-thyroidism, what other things besides the metabolic rate?

A. The first thing to do is to exclude all of the other conditions that may cause hypo-thyroidism. The condition was originally described by a very capable person and called myxedema. Myxedema has a certain group of clinical features, one of which is a striking change in the skin, which anybody can detect after a little practice. These individuals are cold, under ordinary circumstances. They are slow, mentally and physically. They suffer from loss of hair on all parts of their body. They have disturbances in the sexual apparatus. Menstruation, for instances becomes scanty and disappears. All of those features need to be taken into consideration.

Examiner Norwood: All right.

Q. Basing your answer upon your own practice, then, Doctor, would you then consider that thyroid is indicated as a medication in general cases of obesity?

A. I would not.

Q. Why not?

A. Because thyroid substance is only effective if it influences the metabolic rate. The dose has to be sufficient to increase the rate, whatever it was in the first place. It is well known that an increase of rate above the normal is harmful. Since the most obese people have a normal rate any dose of thyroid that is effective will also be harmful.

Q. What harmful effects will it have?

A. Perhaps the most common condition is one of extreme nervousness, irritability, inability to keep quiet, inability to sleep, weeping, flushed face. If the patient is fortunate enough to have these symptoms early and the material is omitted, no harm is done. If the drug is con-



tinued a long time it eventually does harm to the heart. When that harm is done it is permanent.

Q. What harm will it do to the heart?

A. It causes a degeneration of the heart muscle so that the individual ever after has an incapable heart, a heart which is unable to deliver as much blood as the average normal person would expect to have delivered by his heart. I think that is the chief harm.

Q. Upon what portions of the body or what tissues of the body does thyroid act on when taken internally?

A. It increases the rate of oxidation of all of the materials that are normally oxidized, and the increase applies equally to all of them.

Q. In your opinion, does it first oxidize the fat before it oxidizes other tissues?

A. No, simply increases the rate proportionately in regard to each one. That is, if it increases the rate in regard to carbohydrates ten per cent it would increase the rate in regard to fat ten per cent.

Q. In your opinion, does thyroid taken internally act upon the soft tissues before it attacks other tissues?

A. I don't think it acts directly on any tissues. It simply sets the rate of oxidation at a higher level and a more rapid level.

Q. Which affects all tissues?

A. Affects all tissues that are to be oxidized.

Q. In your opinion, does it attack one sort of tissue before another?

A. No, it does not attack any tissue, in a strict sense.

Q. But in the sense of oxidation?

A. No, simply takes no concern with the individual tissue. It sets the rate at a higher level.

Q. Doctor, in your opinion, can an individual safely take 30 grains of desiccated thyroid at one dose?

A. I can't imagine anybody taking a dose like that. It is inconceivable that a dose as large as that would ever be used. I don't see how anybody could answer that question, because I can't imagine anybody would try it.

Q. What in your opinion would be the effect?

A. I would expect acute hyper-thyroidism. I think I would be surprised if the individual did not die. I would expect the thing to happen that we run into in the hospital very often when the thyroid gland is operated upon, acute fatal attack, due to the stirring up of the gland.

Examiner Norwood: If a man should take 30 grains do you think it would all be absorbed?

A. I think it would be absorbed unless it were protected, unless something was put in to prevent absorption.

Q. If a person should take 30 grains of desiccated thyroid without any appreciable serious effect, would there be any explanation for that situation?

A. It is assumed that those two first things are true, that he did take it and nothing bad happened to him?

Q. Yes.

A. Yes, I can think of one thing, suggested by you. There are a number of very elegant preparations on the market, some of which are enclosed in material which does not permit digestion. We have that difficulty in hospitals. In certain drugs, in an attempt to make them delightful, from the point of view of the patient, are enclosed that way, and the whole purpose has been defeated, because they are never absorbed. That is one thing.

It is also easy to picture this complicated organic material having changed so much that it has lost its whole effect. You must remember that it is a very complicated

substance and it may have become infected, may get covered with mold and lost all its original quality, or I could take 30 grains of desiccated thyroid myself and vomit it up again, and it wouldn't do me any harm.

Q. Would a laxative tend to prevent absorption?

A. No, not significantly. Any laxative that would carry the material off would be so violent that the individual would be in collapse.

Q. What is your understanding of toxicity, Doctor?

A. It is one of many words in medicine of Greek origin. It means poisonous.

Q. In your opinion, is desiccated thyroid toxic?

A. Of course, one can use that term in many different ways. Anything that is abnormal might be called toxic. It doesn't belong in the body. It is abnormal and therefore toxic. It is a kind of a word which I personally don't use because it is so broad it has no meaning. I don't know whether that is the information you want.

Q. Does thyroid have deleterious effect on the body?

A. Yes, as I already pointed out before.

Q. And does that deleterious effect come within the broad definition of toxicity?

A. Very definitely.

Q. Doctor, would the taking of six to eight grains dosage of thyroid a day for a period of a year be safe?

A. What is that question?

(Question read.)

A. I should say that persons with full blown myxedema might take that amount without being harmed. On the other hand, it would be distinctly larger than the usual amount required to keep them normal.

Q. Well, would such a treatment be proper for the ordinary case of obesity?

A. No, because such a dose would raise the metabolic rate and produce the various symptoms we have talked about, and if continued long enough injure the heart.

Q. Would a year of such daily dosages, in your opinion, be apt to produce injury?

A. I feel quite sure it would produce the acute disturbance that I described before. I shouldn't want to say that it would produce permanent injury. I wouldn't say in advance whether it would or not.

Q. It might or might not?

A. It might or might not.

Q. Would you as a physician give such treatment to the ordinary case of obesity?

A. Unless, as previously mentioned, I would never use thyroid substance in the treatment of obesity.

Q. What treatment do you use in that small class of cases which you have testified are hypo-thyroids?

A. As well as obese?

Q. Yes.

A. I would use thyroid in amounts to bring their metabolic rate up to normal and then I would find how much was necessary to keep it there and set the dose at that level.

Q. Are those usually large doses or small doses?

A. I can't answer that. That is too vague.

Q. Could a layman tell when their metabolic rate had been raised to normal?

A. Yes, I don't suppose he could say my rate is normal, but he would say I suspect my rate has increased, because I have lost certain features that formerly bothered me. I don't feel cold anymore. My mind works better. I am not sleepy all the time. I notice my hair is growing again.

Q. Would the same dosage produce that result in all cases?

A. In all cases of what?

Q. Of hypo-thyroid obese?

A. Nobody in medicine who takes it seriously likes to use the term "all" because we don't know enough. It certainly is the predicted result.

Q. Well, for instance, could all cases in which you would prescribe thyroid to raise the metabolic rate to normal be placed on a dosage of 2 grains of thyroid a day, divided into four doses?

A. Would that be the proper dose for any one of them?

Q. Yes.

A. No, we don't proceed that way. We give them an amount which is necessary to keep the rate at normal. That is, we determine the rate repeatedly by increasing and lessening the dose. We finally arrive at the ideal for that individual, and the amount is highly variable.

Q. How do you determine when the metabolic rate has been raised to normal by the medication?

A. How do I determine it?

Q. Yes.

A. By having the rate measured.

Q. By the metabolic machine?

A. Yes.

Q. The layman can't do that, can he?

A. You mean the patient?

Q. The patient himself.

A. No, he can't do that himself, no.

Q. Do you use diet alone in any of these cases of hypo-thyroid obese?

A. Do you mean do I refuse to use thyroid substance as well as diet?

Q. And use diet alone?

A. Yes, because some of these patients have had an



amount of thyroid substance which has upset them. It is liable to take a month for the effect to disappear, and during that month they get diet alone. Later on, if the rate becomes very low, we restore it to normal with thyroid substance.

Q. Do you get many patients here, or have you, who are suffering from hypo-thyroidism as a result of taking thyroid?

A. No.

Q. Do you get some?

A. We get some, yes. We are perfectly familiar with the situation.

Q. And are they continually or frequently coming to the hospital for treatment?

A. You mean persons who are also obese, or doesn't that make any difference?

Q. That doesn't make any difference.

A. I can't answer that question, because I don't see the patients in the first place. That is, they go through a storing scheme first, and if they have this condition which you speak of, I probably would not see most of them, because it is a perfectly straightforward, simple condition. We simply issue instructions of what to do about it. My opinion wouldn't mean anything there.

Q. Until later?

A. Until later, If it didn't go well I would hear from them, so I really wouldn't have an opinion of how many there are.

Q. In other words, those patients come to you after the symptoms have subsided?

A. No. They come to me, as a rule because they are unusual. They haven't responded in the usual respect.

Q. The ordinary run of patients don't come to you?

A. That is right.

Q. Now, have you in your experience here observed a number of patients who were extremely obese whose metabolism was normal?

A. Definitely, yes.

Q. In what numbers?

A. I can't recall any extremely obese patient whose metabolism was abnormal.

Q. Have you among these obese that you have treated here a great number who were extremely overweight?

A. Yes.

Q. What weights of people have you had to treat in that respect?

A. The heaviest person we have seen so far weighed 560 pounds. I try to avoid seeing anybody who does not weigh more than 300 pounds. That gives me all I care to do in that field.

Q. In other words, these approximately of 100 a year that you have treated are the extreme obese?

A. No, that is not true, because in the earlier years I saw most of them and then the pressure became greater and I had to put up a fence.

Q. I see.

A. So that the situation has changed.

Q. How many of these extreme cases a year would you say you had?

A. Well, could I refer you to the hospital's statistics?

Q. No, I just want a general statement, whether there are ten or twenty-five or fifty.

A. The broad answer to that is this: That this is a consulting clinic. The large bulk of our patients are sent here from other places because they had not succeeded, had not got what they wanted, and therefore I think that

we see practically all of the extremely obese people who have gone to some doctor and haven't got on and eventually turned up here, that is, within the middle west.

Q. And those are in considerable numbers?

A. Yes. I just saw one upstairs, since you came here.

Q. The one that you speak of is now in the hospital. What is the weight of that person?

A. This one I mentioned before?

Q. No, the one you saw upstairs a little while ago.

A. I don't know. This is a girl of 17. She was huge. I can't tell you what she weighed, and she told the usual story, and I told her to go to the dietitian and get a diet consisting of 1200 calories.

Q. No thyroid?

A. Her basal metabolic rate had already been determined and was found to be normal, and her father, a doctor, said no thyroid, and I said no thyroid.

Q. And you are treating that patient by use of diet?

A. Yes.

Q. Doctor, I hand you this paper, which I ask the reporter to mark for identification as Commission's Exhibit No. 47, and ask you to examine it and state whether or not it contains a picture of one of your patients you treated for obesity?

(The picture referred to was marked "Commission's Exhibit 47 for identification.")

A. This is a series of pictures of a patient I just mentioned who weighed 560 pounds at the onset.

Mr. Michael: Mr. Examiner, I offer in evidence this paper which has been marked for identification as Commission's Exhibit No. 47.

Mr. Gust: You are offering the one side or both sides?

Mr. Michael: Well, I haven't exhibited that.

Mr. Gust: I object to it because of its materiality. It has no materiality or relevancy in this proceeding. What do you claim for it?

Mr. Michael: It is a physical demonstration of the testimony that he has given and an illustration of the facts as testified to by the witness.

Examiner Norwood: What do you want to prove by it?

Mr. Michael: It is merely a part of his statement. These are the pictures of the patient that he has described and pictorial representations, carries the story in much more vivid form than words.

Examiner Norwood: It is a representation of the case where he did not give thyroid.

Mr. Michael: Did not give thyroid and the patient did not show any hypo-thyroidism.

Examiner Norwood: Are these progressive pictures?

Mr. Michael: Yes.

Examiner Norwood: This one down here shows the final result?

A. Yes.

Mr. Michael: Treatment by diet.

Mr. Gust: I object to it as being wholly immaterial and irrelevant in this proceeding, whether the Doctor did or did not have such a patient with that result.

Examiner Norwood: I see no harm in its going in. Objection overruled. I will receive this as Commission's Exhibit No. 47.

(The picture previously marked "Commission's Exhibit No. 47 for identification," was received in evidence, witness Newburgh.)

Q. Now, Doctor, referring to Commission's Exhibit No. 47, I ask you to state whether or not that is the patient

you spoke of a while ago as weighing 560 pounds at the beginning of this treatment?

A. This is the patient I mentioned as weighing 560 pounds.

Q. And was he the patient that did not show any indication of hypo-thyroidism?

A. His basal metabolism was normal, and there were no other signs of hypo-thyroidism.

Q. And did you administer thyroid in reducing this patient?

A. At no time.

Q. What did you see?

A. Diet, and diet alone.

Q. How much did he reduce?

A. His weight in the third series is 194 pounds.

Q. And those pictures show the progress of reduction?

A. The pictures show what diet alone will do in the heaviest man we ever had to deal with.

Q. Now, Doctor, have you had a number of cases that were similar to that one?

A. This is a type case. He is merely published because he happens to be the heaviest of the type.

Q. In your opinion, Doctor, are there certain conditions of patients that prohibit or make it highly undesirable or dangerous to administer thyroid to?

A. Obese patients, or patients of any type?

Q. Yes.

A. Obese patients?

Q. Yes.

A. We believe that the most important thing to do for an obese patient is to teach him what the situation is; to make him understand that he is over-eating; that he has a bad habit and that above everything else he needs to



correct his bad habit and get back to a normal habit if he is going to get any permanent benefit from the thing. It is not so much the reduction of his weight that counts as his ability to maintain a normal weight after he gets it.

Q. Might there be conditions in his body that would prohibit the giving of thyroid?

A. I have said repeatedly that any person other than one who suffers from extreme hypo-thyroidism is in the first place liable to be harmed if he gets a thyroid substance, and at the very least he is receiving a remedy which is unnecessary and which is therefore bad, because he expects to get benefit from a drug and therefore does not take what we consider much more important, does not take seriously our preachments about changing from a bad habit to a good habit, that is, he is a human being and he can swallow a drug and do that in preference to going through the agony of getting rid of a bad habit.

Q. Do you have experimental knowledge of the effects or dangers of thyroid?

A. That is, with animals?

Q. Yes.

A. It is well known that one can produce all of the clinical picture of hyper-thyroidism.

Q. I am asking you if you personally had experimental experience?

A. No.

Q. In that respect?

A. No.

Q. Now, Doctor, will desiccated thyroid when taken internally lower the blood pressure?

A. I have never seen it do that. I have never talked

to anybody who thought it would do that. I have never seen any statement to that effect in serious literature.

Q. Have you seen statements or are you familiar with authorities who maintain that it raises blood pressure?

A. Blood pressure is a variable thing, like pulse rate. Anything that speeds up metabolism may raise blood pressure to a slight degree, moderate degree.

Q. Doctor, would you consider it proper medication for a person who is merely slightly over-weight, say 10 or 15 pounds, who wants to become thin or slender, to use desiccated thyroid for medication?

A. No. I would consider it improper.

Q. Doctor, did you ever see an obese patient who had hyper-thyroidism?

A. I have seen obese patients who had a persistently elevated basal metabolism. I would rather put it that way than the use of the term "hyper-thyroidism."

Q. Would the administration of thyroid in such cases be advisable?

A. I would expect it would make the condition worse.

Q. Do you know any authorities, Doctor, in the field of metabolism who hold to the theory that nearly all obese people are hypo-thyroids?

A. No, I do not.

Q. From your familiarity with the literature, would you say that the consensus of medical opinion is to the contrary?

Mr. Gust: Well, I object to that, the consensus of medical opinion.

Examiner Norwood: Objection overruled.

A. That is easy. There is not any consensus, any characteristic of medical opinion.

Q. It is all one way?

A. No. Medicine is a thing which offers a delightful opportunity for discussion.

Q. Well, do you know of any authorities who hold such a theory?

A. What theory?

Examiner Norwood: He has already said he didn't.

Mr. Michael: All right.

By Mr. Michael:

Q. Doctor, will a person who has taken thyroid and reduced by that method be thus prevented from again becoming over-weight?

A. Not at all.

Q. Why not?

A. Because he simply has speeded up his oxidation by taking thyroid. When he stops taking thyroid he will be just as he was before. If he puts in the same amount of fuel, stops burning it at the new rate, he will get fat again.

Q. Doctor, did you ever come in contact with any authority in the field of metabolism and nutrition who held to the theory that over-weight was not caused by over-eating?

A. How far back in history do you care to go?

Q. Well, in comparatively modern times.

A. I think the honest answer to that is no.

Q. Is it a fact that it is generally recognized that over-eating, or the taking in of more food than is utilized by the body is the cause of over-weight, generally speaking?

A. If you will put in "now," I will say yes. It is now generally recognized.

Q. Doctor, in your opinion would you say it was advisable to give a person for the purpose of reduction a half grain of thyroid four times a day for a period of 60 to 90 days?

A. No.

Mr. Michael: That is all.

### Cross Examination

By Mr. Gust:

Q. Doctor, I take it that the University here maintains a basal metabolic machine which you use in your studies?

A. Maintains a number of them.

Q. A number of them. Did you have an open circuit or closed circuit, or do you?

A. Both.

Q. Which do you consider the more reliable?

A. I don't think it is a matter of the circuit. One can be just as reliable as the other.

Q. Which one gives you the total heat production; do they both?

A. They both do.

Q. They both give you the total heat production?

A. They both give you the same information. The question of the circuit is a purely technical one.

Q. I see. Now, you consider an individual is normal if his basal rate is within the limits of plus or minus ten?

A. Yes, with the exception that there are a few individuals who by every other test are normal and may be plus or minus fifteen per cent.

Q. And those individuals you still class as normal, even though their basal rate might be as low as fifteen or as high as plus fifteen?

A. If I can find no other abnormality I must consider them normal.

Q. And you say that most obese individuals come within that range that you have found?

A. Yes.

Q. I take it, Doctor, that the accuracy of the metabolic reading depends to a great extent at least on the skill of the technician?

A. There are two types of apparatus, a second type which has been very greatly simplified and which is the type which is on the market in general use, and which by its originators is not intended to be highly precise.

Q. I see.

A. The hospital has both types. We in the laboratory have an accurate, precise method of doing it. That machine is too expensive for routine. The hospital has a routine laboratory, with which we have no connection, where a simple apparatus is used and is good enough.

Q. For most purposes?

A. For most purposes.

Q. I see. Now, what you obtain from the basal metabolic machine is the record of the oxygen consumption?

A. Yes.

Q. Of the patient, is that right?

A. That is right.

Q. And that is the only thing that the basal metabolic machine gives you, is that right?

A. No, if you use the kind of apparatus that we use it also tells you the production of carbon dioxide.

Q. And you get both of those values?

A. Yes.

Q. Of the patient?

A. Yes.

Q. I take it that there are a good many other processes going on in the body that this machine does not tell you anything about, is that right?

A. It tells you nothing about most of them.



Q. Yes. Now, these basal metabolic machines have been in use about how many years?

A. You mean as a routine general thing?

Q. Yes, as a general thing. Oh, just roughly.

A. Fifteen years.

Q. About fifteen years. Have you made any studies of your obese patients about their rates, their metabolic rates, under other conditions than basal conditions?

A. Yes.

Q. Have you found that in some of them at least they don't have a normal response to a protein meal?

A. No, we made a special study of that and find they do have a normal response.

Q. You are aware that some investigators advance the theory that obese people do not respond normally to protein intake?

A. Yes.

Q. But you don't subscribe to that theory?

A. Our own studies—

Q. (Interrupting): Don't bear that out?

A. —don't bear that out.

Q. You have seen that advanced by other investigators, though, haven't you?

A. Oh, yes.

Q. I take it that there are a good many things that will raise the basal metabolic rate, aren't there, Doctor?

A. No, there are not very many. The conditions are well known.

Q. Well, exercise will raise it, will it not, temporarily?

A. Are you speaking of the basal rate?

Q. I mean the metabolic rate.

A. The metabolic rate is proportionate to what you are

doing. It is simply a measure of what you are doing in the sense of activity.

Q. Then exercise raises it?

A. Yes.

Q. And intake of food raises it?

A. Yes.

Q. And do you subscribe to the theory that the patient's mental condition may have some effect on it?

A. Yes, and the apprehension precludes the measuring of the basal metabolic rate.

Q. A patient who is worrying considerably, has some fear or something of that sort, and you attempt to take his basal metabolic rate, and you don't get the true basal reading?

A. That is right.

Q. It is apt to be higher?

A. Yes.

Q. Is it also true that the condition under which the test is made, if the patient does not cooperate well, that you may get a false reading?

A. High or low.

Q. Either high or low?

A. Yes.

Q. Now, are you familiar with the theory that some investigators have advanced of sort of a luxury consumption theory?

A. Painfully familiar.

Q. Do you subscribe to that?

A. I think I have disproven it.

Q. In general, that theory is that some individuals have metabolic processes at times which account for their failure to take on weight? Is that roughly in lay language the theory?

A. I think I can state it very simply.

Q. All right, I wish you would state it for us.

A. The originator of this theory stated that all normal people increase their metabolic response to food to such an extent that they burn it all; whatever is put in is consumed. If he gets fat, by inference it is because of a disturbance in that mechanism. May I add another thought?

Q. Yes, go ahead.

A. The originator of this idea presented some men and some dogs in his article, having first stated that if they were normal or normal people or normal dogs, with any amount of material they would consume it all. It is stimulus in proportion to the food.

Q. In other words, it made the thing automatic?

A. Yes, automatic control, and then he presented instances to show this effect took place, and each one of these individuals gained weight when he increased the food, so, so far as I could see, having read it first in German and then in his English translation, he defeated his own statement.

Q. Who was that investigator?

A. Erich Grafe.

Q. And Dubois commented on it to some extent at various times?

A. Yes.

Q. And to some extent subscribed to that theory?

A. Yes, and personally he told me—

Q. Never mind that. You can not tell me what he personally told you.

A. Get his latest edition of his book.

Q. Is it out yet?

A. Yes.

Q. It has been printed, has it?

A. Yes.

Q. When was it out, do you know?

A. It is just out now. I don't know the exact date. I received a notice of it, but I haven't seen it. I know what he says.

Q. Now, Doctor, when you treat obesity you treat it purely from the standpoint of reducing the intake below the energy expenditure, don't you?

A. Yes, plus education. I insist on putting that in.

Q. Well, so far as the treatment itself is concerned it is either a voluntary restriction or a forced restriction of diet?

A. No, we have no authority to enforce anything. It has got to be voluntarily. It is illegal for us to insist.

Q. All right. It is voluntary reduction of intake below expenditure?

A. That is right.

Q. As you calculate it for that individual?

A. That is right.

Q. And that means that that individual then calls upon some of the stored material in the body?

A. Yes.

Q. To maintain his daily activity?

A. That is right.

Q. Is that right?

A. Perfect.

Q. And if he does follow that regime and reduce his intake to this point below the energy expended he must of mathematical necessity lose weight?

A. Yes.

Q. The difficulty, I take it, is to get the patients to do that?

A. Yes, and the difficulty is very real, because most of

them in my opinion have been misled. They have heard a lot of things.

Q. In any event, it is difficult in a great many instances at least to get patients to do that?

A. Yes.

Q. Now, do you prescribe any exercise?

A. No.

Q. Along with it?

A. Not in the sense in which that is used medically, no extra exercise.

Q. I mean extra exercise.

A. No.

Q. I take it, Doctor, that not all patients behave quite the same on a restricted diet. It is easier to reduce some of them than others?

A. Yes, some of them cheat less than others.

Q. And some of them don't seem to do quite as well on a restricted diet as others?

A. No, I won't admit that.

Q. You won't admit that?

A. That is, putting it the other way around, whenever we have succeeded in closing a patient in a sealed space, as it were, have made arrangements that are legal, and still have perfect control, the response is always according to the prediction.

Q. Now, in any weight-reduction program it is the body that oxidizes the stored material so that the individual loses weight, is that right?

A. That is right.

Q. And that is true if the reduction is attempted by the use of desiccated thyroid?

A. Yes.

Q. And you didn't mean to intimate that in either pro-



cess, either reduction by restricted diet or starvation or by medication with desiccated thyroid that the individual oxidized any of his muscle tissue before he oxidized his stored materials?

A. No, the muscle tissue in that sense may be classed as stored material. I can clarify that. I can say it is easy by arrangement of diet to prevent attack upon muscle tissue.

Q. It is purely a question of having sufficient protein in the diet, is that right?

A. That is all.

Examiner Norwood: Well then, this consumption of the stored fat, it will be consumed before the muscle.

A. There is no reason why the muscles need to be consumed at all.

Examiner Norwood: In the case of thyroid.

A. No, no. You can't do anything about the muscle by means of a drug. The muscles can be protected completely by means of dietary arrangement. The diet can still cause loss of weight without loss of protein tissue.

Q. That is always true if the patient is taking enough protein in his diet?

A. Yes.

Q. Now, I take it, Doctor, that most people find it easier to maintain a given weight than they do to reduce from where they are, is that true?

A. That is true.

Q. And if a person goes through a weight-reduction program, either by thyroid medication or by diet and gets to a certain weight, it is much easier for that patient to remain there than it is to get there?

A. Yes, but I being seriously interested in this question, if proper, would like to add this further statement; that

even though one can burn away material by means of thyroid substance, that to say the least is a very narrow-minded way of treating a human being, because the problem is not primarily to get rid of the excessive fat, the problem is to teach him how to live in the future, so he won't get it again, to make him understand the situation, and that is a matter, as I said so often, of education.

Q. Of course, it is perfectly possible for an individual to overcome anything that the doctor does for him if he goes back to his old habit?

A. Certainly.

Q. I understand that, but normally speaking if he attains a certain weight through a weight-reduction program, it is easier for him to keep that weight than it was to get there?

A. No, I wouldn't say that.

Q. You don't think that is so?

A. No, I don't think so. If thyroid substance is used to get rid of extra weight, I would fully expect him to return to the original weight, or something like it, after he omitted the drug, because his excessive habit still exists.

Q. Have you found that thyroid medication has a tendency to stop the appetite to some extent?

A. No, I have not. People who have hyper-thyroidism usually talk about an excessive appetite. That is one of the features.

Q. Yes, and people who have hyper-thyroidism to a marked extent at least are usually slim, are they not?

A. Yes.

Q. And people who have diabetes mellitus to an advanced degree are apt to be thin, aren't they?

A. Yes.

Examiner Norwood: What is the treatment for hyperthyroidism?

A. Hyper-thyroidism appears in two forms. One is called Graves' Disease, and the other is called toxic adenoma, and the old treatment is surgical removal of most of the thyroid gland in either case.

Q. Is it your view, Doctor, that in Graves' Disease or toxic adenoma that the thyroid gland is dis-functioning?

A. "Dis," meaning abnormal?

Q. Yes.

A. Certainly abnormal at the very least.

Q. Is it making a different substance?

A. Nobody has ever been able to show that. There has been a long attempt to try to demonstrate an abnormal chemical substance.

Q. Some investigators hold to that view?

A. They hold to it as a problem, but they have no evidence, so far as I know.

Q. At least that is their opinion?

A. Yes.

Q. Upon what evidence they have been able to gather whether it is conclusive to you or not, isn't that so?

A. I would say they have never offered the essential material in the thyroid gland as a substance called thyroxin, a chemical entity. These people have never offered an abnormal thyroxin, a different kind of organic compound, or any other substance.

Q. Did you ever see any patient that got any exophthalmia from thyroid medication?

A. Yes.

Q. You have seen that produced?

A. Yes.

Q. That is one of the symptoms of Graves' Disease, isn't it?

A. Yes.

Mr. Gust: I think that is all.

### Re-direct Examination

By Mr. Michael :

Q. Doctor, has Dubois now changed his attitude toward the theory advanced by this German about whom you spoke?

Mr. Gust: I object to that.

A. That is the reason I did not answer.

Mr. Gust: The Doctor has indicated all he knew about it was what he got in a conversation with Mr. Dubois: I say that is hearsay.

Mr. Michael: It was hearsay when you asked if he approved of it.

Mr. Gust: I object to your hearsay even though you did not object to mine.

Examiner Norwood: Off the record.

(Discussion off the record.)

Examiner Norwood: Objection overruled.

Mr. Gust: I object to that as being hearsay.

Q. Has he changed his mind?

A. I think the way to put it—

Q. You can answer that "yes" or "no," if you know.

A. The answer is yes, and I think the whole story is that Dubois himself had never worked in this particular field. He knew Grafe intimately and said that he has a brilliant mind, but he is very erratic, and what he put in the book is what Grafe thought, and now he has our work and he finds Grafe is entirely wrong. That is the whole story.

Q. Doctor, would you consider it a correct statement

that the fatty tissue is used up long before there is any muscular oxidation, referring to the taking of thyroid?

A. Well, I think I explained that before. The degree to which any one material is used is to a considerable extent dependent upon what is eaten.

Q. Well, speaking about the effect, the chronological effect of the thyroid alone?

A. The thyroid simply increases the oxidation of each of the three materials, carbohydrates, protein and fat.

Q. Now, supposing a patient is following an ordinary diet, without any special diet that is prescribed for him?

A. Eating as much as they would ordinarily eat?

Q. Yes. Then would the taking of thyroid cause the fat to be consumed in greater proportion than the muscular and other tissues?

A. The large store of fuel in the body is in the form of fat, and if you burn more fuel you call upon more fat. I think that is the whole story.

Q. What about the sequence of the action? Is the fat first or all of the body tissues at the same time?

A. All three tissues are being involved all the time. The fat is always the great source of energy under any circumstances.

Examiner Norwood: Well, would the fat all go if the muscles are reduced?

A. No, after the fat diminished there would be more and more call upon the muscles, other things being equal.

Examiner Norwood: Any further questions?

Mr. Gust: No, that is all.

Examiner Norwood: Thank you, Doctor.

A. You are welcome.

(Witness excused.)



Mr. Michael: The Commission rests its case at this point.

Examiner Norwood: What is the pleasure of the respondent as to further hearing?

Mr. Gust: I want a further hearing in view of the testimony introduced by the Commission, which I do not think was proper rebuttal.

Examiner Norwood: What time would you like that hearing? What is your convenience about that?

Mr. Gust: Mr. Examiner, I am unable to fix a date of hearing at this time because I have some matters in the District Court of the United States for the Eastern District of Michigan which are at this moment a little uncertain as to date, and until I can ascertain the Court's pleasure with those matters I can not fix a date for this hearing.

Examiner Norwood: Well, we will adjourn to reconvene on five days' notice, with the understanding that we will take the matter up at your earliest convenience.

Mr. Gust: All right.

Examiner Norwood: The hearing is adjourned at four o'clock, p. m., to reconvene on five days' notice.

(Whereupon, at 4:00 o'clock P. M., April 10, 1936, the hearing in the above-entitled matter was adjourned to reconvene on five days' notice.)

## PROCEEDINGS

(Continued June 19, 1936)

Examiner Norwood: The hearing will come to order. Pursuant to adjournment of the last hearing in this case at Ann Arbor and by order of this Examiner, dated the

9th day of June, 1936, a hearing in this case is now convened at 1 P. M., the 19th day of June, 1936, in Room 722 Federal Building, Detroit, Michigan.

Mr. Harry D. Michael appears for the Federal Trade Commission.

Mr. Rockwell T. Gust appears for the Respondent.

The hearing is convened to take further testimony for the Respondent.

You may call your witness, Mr. Gust.

AGNES L. HANNON, was thereupon called as a witness. and, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Gust:

Q. Your full name?

A. Agnes L. Hannon.

Q. Where do you live?

A. 7350 Churchill.

Q. In the City of Detroit?

A. In the City of Detroit.

Q. And you are connected with the Raladam Company?

A. Yes.

Q. And have been for a number of years?

A. Yes.

Q. Now, Miss Hannon, did you ever meet a Mrs. Gigstead?

A. I did.

Q. Where?

A. In our office.

Q. About when was that?

A. In April, 1930.

Q. She came into your office?

A. She did.

Q. And who did she ask for?

A. The General Manager.

Q. That was Mr. Hayes?

A. Mr. Hayes.

Q. Was he there?

A. No; he was out.

Q. Did you talk with her?

A. I did. I asked her if there was anything I could do for her or if she wanted to leave any message.

Q. Where did you talk with her?

A. Well, then, she said she would like to talk to me privately, so I took her into Mr. Hayes' office and talked to her.

Q. Will you tell us the substance of that conversation?

Mr. Michael: I object. There is no conversation of that kind gone into in rebuttal.

Mr. Gust: There wasn't any such conversation went in in rebuttal, but the subject matter of Mrs. Gigstead was gone into in the rebuttal, and this is the same subject matter.

Mr. Michael: Yes, but it did not involve a conversation with her.

Mr. Gust: That is true.

Examiner Norwood: You object to it on account of its being hearsay?

Mr. Michael: I object to it because it is not sur-rebuttal, and, secondly, on the ground that it is hearsay, of course.

Examiner Norwood: Well, I shall overrule the objection so far as it is rebuttal is concerned. As I understand

it here, this is to be testimony on these matters that were last tried out by the Commission. How is that admissible?

Mr. Gust: Well, if the Examiner please, the Government has brought out at the last hearing the fact that the Raladam Company settled an alleged claim of Mrs. Gigstead against the Raladam Company. Now, the inference obviously sought to be drawn from that is that Mrs. Gigstead suffered some injury or damage from taking Marmola. I propose to prove by this witness that Mrs. Gigstead admitted in this conversation that she didn't take Marmola according to directions at all, but took a great quantity more than the directions called for.

Now, I think that has a distinct bearing upon the inferences which the Commission seeks to have drawn from their testimony.

Mr. Michael: In that connection, Mr. Examiner, I would like to call the Examiner's attention to the fact that the only evidence introduced by the Commission with regard to such circumstances was the fact that a suit was filed and that a settlement was made. No evidence was introduced as to the condition of the woman or anything about any conversation or anything she had said, but merely that a settlement had been made, and it was introduced on the ground and admitted, if the Examiner remembers, as clarifying the statement made by Mr. Hayes in his testimony in which he stated in substance that a settlement was made for something like \$25.00.

Examiner Norwood: Well, that was put in in order that the inference might be drawn that the medicine was damaging to the person who received the settlement. That is all very clear, and if this witness were here, it is very clear that she might state just how she took that medicine and

all the facts about it. But, this hearsay conversation given by an employee of the Respondent, I presume—

Mr. Gust (Interrupting): Pardon me. If the Examiner please, I submit, of course, that the Federal Trade Commission can't try a personal injury suit. I objected to this testimony relative to this alleged settlement when it was offered as not having any probative force, but the Government nevertheless was permitted to put it in. Now, if Mrs. Gigstead herself were suing, this would be perfectly competent testimony as an admission.

Examiner Norwood: As a case between those two parties.

Mr. Gust: Yes.

Examiner Norwood: Yes.

Mr. Gust: The Government here seeks to have the Commission take that settlement as some evidence that Mrs. Gigstead had a claim. Now, I think the Government stands somewhat in the shoes of the claimant when they take that position, and that Mrs. Gigstead's admissions are permissible to be put in evidence here.

Examiner Norwood: Off the record.

(Discussion off the record.)

Examiner Norwood: Objection sustained.

Mr. Gust: Well, I offer to prove by this witness that Mrs. Gigstead came to her office and stated to the witness that she had taken Marmola for more than a year and had reduced about one hundred pounds. And, I also offer to prove that she then stated that instead of taking one tablet after each meal and at bedtime, according to the directions, that she had taken from two to five tablets after each meal and at bedtime.

I also offer to prove that Mr. Hayes came into this conversation later and at that time did give Mrs. Gigstead



\$25 which she took and went on her way, apparently satisfied.

I understand that that offer is excluded.

Examiner Norwood: Is this the person where the testimony is to the effect that they received \$2,000 or \$3,000 in settlement?

Mr. Gust: \$2,000.

Examiner Norwood: Yes.

Mr. Gust: I also offer to prove that the Raladam Company was advised by counsel before this settlement was made, in writing, that they were not liable in the proceedings.

Do you have that letter?

The Witness: I have.

Mr. Gust: I will offer that in evidence as Respondent's Exhibit 33.

Mr. Michael: Mr. Examiner, I think the offer is broader than the question that was asked this witness, and includes several things that would require separate rulings. It should be separated for that purpose.

Examiner Norwood: Well, all of these matters and things he proposes to prove by hearsay evidence. As to any of those matters and things he has stated here, he may prove by any direct and competent testimony.

Mr. Gust: As I understand it, this ruling is that all statements made by Mrs. Gigstead to this witness are excluded?

Examiner Norwood: Yes.

Mr. Gust: Those were included in my offer.

Examiner Norwood: If you can prove those things in another way, all right.

Mr. Gust: I will state on the record that I do not know

the present whereabouts of Mrs. Gigstead. The last I heard of her she was somewhere in Texas.

Q. Mrs. Hannon, I show you a document that has been marked Respondent's Exhibit 33, and ask you if that is a letter which was received by the Raladam Company shortly following the date of the letter.

A. It is.

Mr. Gust: I offer it in evidence.

Mr. Michael: I object as immaterial. It has nothing to do with the refutation of the evidence offered by the Commission as to the amount of settlement.

Examiner Norwood: What member of the firm wrote this?

Mr. Gust: I did.

Examiner Norwood: Then you certify to the truth of the contents thereof?

Mr. Gust: I vouch for that letter, yes, sir. I will be sworn if counsel wants me to.

Examiner Norwood: I don't think it is necessary. That is received as Respondent's Exhibit No. 33 and the Commission's attorney excepts.

Mr. Michael: In other words, you overrule the objection?

Examiner Norwood: Yes.

(The letter referred to was marked Respondent's Exhibit No. 33, and received in evidence.)

Examiner Norwood: Off the record.

(Discussion outside the record.)

By Mr. Gust:

Q. Now, Mrs. Hannon, during that conversation did Mr. Hayes come in toward the end of it?

A. He did.

Q. Did Mrs. Gigstead ask Mr. Hayes for any money?

A. She did. She said she was in town, in Detroit—  
Examiner Norwood: Wait a minute.

Mr. Michael: That is going into the conversation again that the Examiner has ruled on.

Examiner Norwood: Well, he is asking her the fact of this circumstance here. He is not bringing out any conversation to prove the truth of the conversations themselves.

Mr. Gust: No, your Honor.. This is in explanation of this \$25 payment.

Examiner Norwood: Yes.

Objection overruled.

Q. (By Mr. Gust): What did she say to Mr. Hayes?

A. She said she was in Detroit and had no money, she was practically broke, and she asked him to help her.

Q. And did he give her any money?

A. He did. He took the money out of his pocket, about \$20 or \$25 in my presence and handed it to her.

Mr. Gust: I see. That is all.

Mr. Michael: That is all.

DR. WILLIAM A. SPITZLEY, was thereupon called as a witness on behalf of the Respondent, and, having been first duly sworn, testified as follows:

### Direct Examination

By Mr. Gust:

Q. Your full name is Doctor William A. Spitzley?

A. Yes, sir.

Q. Where do you live, Doctor?

A. I live in Detroit.

Q. Were you subpoenaed to come here?

A. Yes; I was.

Q. What is your business or profession?

A. I am a physician and surgeon.

Q. How long have you practiced?

A. Oh, since the 1st day of July, 1897.

Q. Are you a graduate of a medical school?

A. Yes.

Q. You are licensed to practice in Michigan?

A. I am.

Q. Will you tell us briefly, Doctor, your educational qualifications and your experience.

A. Well, I was graduated from the University of Michigan in 1895 with the Degree of Bachelor of Arts, and in Medicine in 1897.

I then remained at the University, teaching in the Medical Department until 1903.

I then came to Detroit and lived at Detroit until 1909.

I then went abroad for three years to study and I came back in 1912 and practiced until July 3, 1917, when I went to France in the Medical Corps of the Army. I served there well, for practically two years.

I returned to the United States in June, 1919, and I have practiced here since then.

Q. Are you on the staff of any hospitals?

A. Yes. I am on the staff of Harper Hospital and have been for 18 or 20 years, and I am still Consulting Surgeon of the Women's Hospital, and have for many years been a Consultant at the Detroit Tuberculosis Hospital.

Q. Do you have any other connections at the present time?

A. Of what?

Q. Well, do you have occasion to examine a great many people for any purpose?

A. Yes. I am Michigan Medical Referee of the Mutual Life Insurance Company of New York and Examiner for many other insurance companies, both life insurance and accident insurance companies.

Q. Where did you study when you were abroad?

A. Well, I was Assistant in the University of Berlin for nearly two years, and I spent two summers at the University of Switzerland with Doctor Theodore Kocher and Doctor Steinman, who was his senior assistant at that time. I was in Vienna and I also studied with Doctor Hertzel in Budapest for six months.

Q. Now, Doctor, at my request, did you examine a woman by the name of Skardarasy?

A. I did.

Q. And when did you examine her, Doctor?

A. I examined her on January 9, 1936 at her home at 14962 Lauder Avenue, with her physician, Dr. Rosenman.

Q. Had you ever seen her before?

A. I had not.

Q. Now, did you give her a careful examination?

A. I did.

Q. Did she show any evidence at that time of thyrotoxicosis?

A. Not at the time of my examination; no, sir.

Q. What did your examination disclose, Doctor?

A. Well, if I may say, I had obtained a history of her illness, both from her and from her physician, and from both of them I learned that she had been ill since September 30, which was the date she consulted Dr. Rosenman. Both she and Dr. Rosenman then told me of her symptoms, which were largely those of weakness and inability to do her housework and shortness of breath, swelling of her lower extremities, and also she told that she had been



mobilized in bed because of a heart condition for which Dr. Rosenman said he had treated her more or less continuously for several weeks at that time and intermittently up to the time that I saw her.

I then made a careful physical examination.

Examiner Norwood: What was the date of this examination?

A. January 9 of this year.

I then made a physical examination, essentially of her chest; that is, of her heart and lungs; likewise of her lower extremities. I examined her reflexes. I took her blood pressure. I examined her for muscular tremors, all of which was done with the desire to know what the condition of her heart was and also to determine whether or not there were any remaining symptoms of the kind that were described to me by Dr. Rosenman.

Her lower extremities were slightly edematous; that is, swollen. She was in bed at the time I saw her, and I was told that she had been in bed a large portion of the time, for several months previous to my visit.

I then examined her heart and found that she had a very typical and very frequently found organic impairment of her heart, which is described as mitral regurgitation, which means that as the lower lobe of the heart contracts, some of the blood goes back through the mitral valve, causing a leakage of that valve. It is called mitral insufficiency or mitral regurgitation.

Her blood pressure was quite normal, 122 mm. over 78 or 80.

Her pulse rate was not accelerated, and it was my opinion as expressed at that time that the woman unquestionably had a heart impairment of a kind that is called an organic valvular lesion, specifically leakage or insufficiency

of the mitral valve, which lies between the left auricle and the left ventricle on the left side of the heart.

Her pulse was regular.

There were neither intermissions nor irregularities in its rhythm, and at that time I expressed my opinion to Doctor Rosenman, and later to you, that I could find no evidence at the time of my examination of hyperthyroidism or stimulation from excessive thyroid activity.

I expressed the opinion that she had a heart impairment of a kind which in my opinion would produce several symptoms of which she complained, namely, her shortness of breath, her feeling of weakness, undue rapidity of her heart on exertion, and I think I also said at that time that those organic lesions are usually the result of a previous infectious process which has affected the lining of the heart and makes the seating, so to speak, of that valve, imperfect.

Those things are usually of long standing and most commonly result from infectious diseases of childhood, and it was my opinion that this heart condition, so far as I could tell, had existed for many years.

I thought that her treatment, rest, which was given her by the physician, was entirely correct for a heart which was impaired, and which for some reason had become uncompensated. A heart will do extra work to compensate for an impairment. When that compensation continues, the individual has those symptoms. If under exertion or under stress or strain that heart does not compensate perfectly for its impairment; it produces incompenation, and that results in a lack of blood supply to the various parts of the body while that incompenation lasts, and a person may be weak, may faint, may be short of breath, may get completely exhausted from physical exertion during the period of incompenation.

At the time of my examination I thought the heart was almost completely compensated for, although the slight swelling of the lower extremities showed that the circulation was not actually perfect.

I think that covers it.

Q. (By Mr. Gust): In your opinion, Doctor, would you attribute her condition in any way to thyro toxicosis or thyroid medication?

A. Well, obviously I couldn't, because at the time I made the examination, the cardinal symptoms of thyroid poisoning were totally absent; I mean by that, the pulse was not too frequent, it was perfectly regular; it was not intermittent. Her blood supply was normal. She had no tremors and she had no exaggerated reflexes.

Those are the cardinal symptoms of excessive thyroid activity, whether from excessive activity of the gland itself or from additional thyroid substances taken into the body for medication.

Q. Well, in your opinion, Doctor, did you ever see a person with a heart condition such as you found there, where the valve did not fit, come from thyroid medication?

A. No; I never have. I see a great many hearts with impairments and very many with this kind of impairment, but it is a structural change.

Impairments that come from toxic medication of any kind do not affect the anatomical structure of the heart but affect either the nerves through which the stimulation goes to the contracting muscles of the heart, or affect the heart muscles, producing what technically is called myocarditis or myocardial degeneration, which means degeneration or inflammation of the muscles that compose the heart walls.

Those functional disturbances can come from any kind of

toxic irritation. The structural changes we look upon as the result of a specific infectious process which has occurred some time in life causing the smooth edge of the valve, or the smooth edge of the opening into which the valve fits, to become roughened and to therefore make an imperfect closure when the valve should normally close perfectly.

And, I myself have seen many cases of hyperthyroidism, especially during two summers in Switzerland, and I talked with Doctor Kocher, in whose clinic I was for four or five months, and I have never seen a case in which I have either been told or have seen or have thought that that organic change came from any kind of toxicosis.

Q. Now, Doctor, following that, did you give me, as attorney of Raladam, substantially this report as you have given it here?

A. I have.

Mr. Guist: That is all. Cross examine.

### Cross Examination

By Mr. Michael:

Q. Doctor, had you ever examined Mrs. Skardarasy before?

A. No, sir. This is the first occasion on which I had ever seen her.

Q. You had never seen her before?

A. No, sir.

Q. Would it be true, Doctor, that if a matter of five or six months had elapsed since Mrs. Skardarasy had taken any desiccated thyroid, that the immediate symptoms would have disappeared?

A. They might very readily have; yes, sir.

Q. If there were any harmful results, that would be shown in the body structure in some way; in other words, the temporary symptoms that you have enumerated as being symptoms of too much thyroid, would have disappeared after several months, as, for instance, the increase in the heart beat, and so on?

A. I assume they would have, and so far as I know any that had been present, if they had been present, had disappeared, yes, sir.

Q. Yes?

A. In other words, at the time of my examination I could find nothing that in my opinion indicated excessive thyroid activity, either artificial or from stimulation.

Q. Well, you would not expect to find that after that lapse of time, would you?

A. I would not, unless it had produced some permanent damage,

Q. And the permanent damage would be different from these symptoms that you enumerated?

A. Yes. I think the permanent damage would have shown itself in heart irregularity and in intermissions of the heart, and in change in blood pressure relations, and therefore in their absence I make the statement that I could find no evidence of hyperthyroid activity, artificially stimulated, or natural, or any other way at that time.

Q. What I am trying to bring out,—and I don't know whether I did, if I am right about it,—that the temporary symptoms would have disappeared, and if there were permanent injuries only those permanent injuries would be apparent as symptoms.

A. Yes, sir; that is quite right.

Q. Now, would you have any explanation, Doctor, for Mrs. Skardarasy's condition, assuming that she showed no heart condition prior to, say, July of 1935?



A. May I ask a question?

Q. That was in 1936 that you examined her?

A. Yes, sir; in January.

Q. All right.

A. Do you mean if she is known not to have an abnormal condition?

Q. I am assuming. Could you have explained for her condition that we assumed, if she had not any symptoms of that kind on examination, say, in July, 1935?

A. It certainly is definitely my opinion that the heart condition which I found at the time of my examination has nothing to do with the thyroid one way or the other. Now, obviously, if her physician says that she had a rapid pulse, had a high blood pressure and had heart irregularity at the time he saw her, I have no possible way of denying that. I don't know that those things did not exist.

Q. Well, I am assuming, Doctor, that the patient did not have any indication of permanent heart injury approximately in July, 1935. Now, beginning with that assumption, could you make any explanation of her heart condition at the time you examined her?

A. Well, I can only say that the heart condition found at the time of my examination might not have shown any critical signs or symptoms.

Q. You mean, in July, 1935?

A. Yes, sir. There are many thousands of people who have impaired hearts of this kind who are working, doing hard work. All of a sudden, one day, as a result of over-lifting or extreme fatigue or something, that heart suddenly becomes decompensated, and they may never have known they had an impaired heart previous to that time, and yet the chances are in 1927 the heart begins to give out and begins to be decompensated and there isn't anything in the

history to tell me why it should in September, 1930. She may have had a sudden feeling of weakness which made her go to her physician.

I am not trying to evade your question. I am trying to interpret it. She may have had this leaky valve all her life. I personally think she did, although I have no real reason for thinking so, only from experience with thousands of patients, and in September, especially September 30 when she went to her doctor, she may have scrubbed the floor; she may have done any washing or something, and suddenly she became so breathless that she said: I must go to my doctor. That could occur without any kind of thyroid disturbance or medication. I don't know that it occurred, but I mean that is a physiological possibility.

Now, it is difficult to perceive that a person should have had all of her symptoms from the small doses which I am told she had. Certainly, we recognize that there are degrees of susceptibility to every type of chemical thing that is used in the art of medication. As a rule, I would think it most unusual for any woman, even a woman with a mitral valve, leakage, to be seriously affected by small doses; yet, we do know that people are unduly susceptible to thyroid substances, to adrenal substances, and other things in varying degrees.

Examiner Norwood: When they are susceptible, will the thyroid medication precipitate or aggravate it?

A. Not unless they are susceptible, say, to thyroid.

Examiner Norwood: That is what I mean.

A. In other words, if I were susceptible to cucumber poisoning, why cucumbers is the one thing that would give me the violent convulsions that I happen unfortunately to get when I eat cucumbers. But, the fact that she had a susceptibility to other things would not change it, but if

she had an undue susceptibility to thyroid, large doses or moderately large doses certainly would affect her more readily than it would a person who does not have that susceptibility.

Examiner Norwood: In that case would it aggravate this heart condition that you have described as having found in here?

A. No, sir. It would affect another part of the heart in a different way, but in my opinion it would not affect either favorably or unfavorably the mitral condition, which is the only abnormality that I could find in my examination.

By Mr. Michael:

Q. In other words, as I understand your answer, or your statement, Doctor, this condition of the heart might have existed in what I, as a layman, would call an incipient stage and not be precipitated or observed on an examination by a physician even?

A. Well, no. A careful examiner should detect it, but in the course of a year I examine perhaps three thousand people for life insurance, and I am astounded to find that people with heart lesions of this sort have been examined by physicians who have not detected them, and I am astounded at the number of times I have to tell people that they have a heart lesion, who say that they have never been told so before, and some of them are forty and fifty years of age.

Q. Well, in other words, Doctor, when the condition is in this incipient stage and the person himself or herself does not observe it or notice it and is not affected in any way in their daily life, and then suddenly it comes upon them whereby they have to take to their bed and they are

weak and they can't do anything, there has been a sudden change somewhere?

A. Something has happened.

Q. Something has happened?

A. Yes, sir.

Q. And it is entirely different from the condition that existed before; at least, in degree?

A. Yes, in degree, certainly.

Q. Well, now, I believe you said that condition might be brought on by some kind of muscular activity.

A. It could; yes, sir.

Q. Is the effect of taking thyroid over a long period of time, say, two or three months, at a dosage of two grains a day, equivalent or similar to the effect upon the human body as muscular activity and its strains on the heart and other organs?

A. To such an extent as it might make the heart beat more frequently, to that extent it makes the heart do additional work; yes, sir.

Q. And that is what muscular activity does, doesn't it?

A. Well, partly, but there are many other factors; I mean, excessive activity and fatigue are the result of fatigue poisons in the body; in other words, when I burn up a muscle by using it, I have by-products form, just as in the ashpit of my furnace, which I get rid of by having the ashes taken out, which must be excreted. Those poisons are not harmful things in over exertion, except in those cases where the extreme effort of lifting an enormously heavy thing, a thousand pounds or more, produces a tremendous increase in blood pressure, and the vessel gives way.

Q. Any kind of muscular activity, if at all violent, creates a strain upon the heart, doesn't it?

A. Only by reason of the fact that the harder we work, the more blood we need to supply the tissues that are doing that work; therefore the heart must work more frequently in order to supply us the pressure.

Q. And an increase in metabolism produced by taking desiccated thyroid over a period of two or three months produces that same condition, doesn't it?

A. If sufficient of it is taken to affect that individual, yes, sir.

Q. Say, even at the rate of 2 grains a day, if taken for a long period of time?

A. Well, it is a dosage, the harmful effects of which I have never myself personally observed. It is my belief that unless a person is a physiological freak that harmful effects from that size dosage are so rare,—at least, they are so rare that I have never seen them. ♀

Q. Might it depend on the length of time that it was taken?

A. Oh, surely. And, it might depend upon whether that person's kidneys and bowels were excreting properly; in other words, you might get a moderate degree of cumulative effect. It is unusual, because thyroid normally, if stimulated makes every part of the body work faster and harder; the kidneys and excreting organs as well.

Q. It is true, Doctor, taking 2 grains of thyroid over a period of 2 or 3 months, continually during that period, would tend to put an additional strain upon the heart and cause it to work and act faster all during that period?

A. Surely, I don't think there is any question that to a person susceptible to thyroid that that stimulation could manifest itself in several ways, by a more rapid pulse; by even irregularity and intermittency of the heart; by increased blood pressure; by increased activity of the skin



and kidneys and everything else. But, of course, I am theorizing entirely. I don't believe it would have any effect upon the only condition in her heart which is wrong that I know anything about. I don't believe it would effect her valvular heart lesion either favorably or unfavorably. She might go through a period of acute toxicosis. We see that in patients who have not taken thyroid from too much activity either. We have seen it in patients who have been given indiscreet doses of it, and temporarily have shown that stimulation suddenly.

Q. Now, Doctor, in your investigation of the case and your interviews with the witness, or with the patient, and her physician and others immediately concerned, did you learn that between the period from the 1st of July, 1935, and September 30, 1935, she had indulged in any extreme physical exertion that would be sufficient to cause the sudden outbreak of this mitral condition that you have described?

A. Of course, I don't think there was any sudden outbreak of the mitral condition. I think that has been ever present.

Now, she did her own housework, which she told me in telling how badly she felt at the time I saw her. She stated: Why, Doctor, I did my own housework; all of it. I was a strong and vigorous housekeeping woman.

Now, my observation has been that women doing all of their housework, it is pretty hard work, and it might have produced inc ompensation of her mitral heart lesion. I don't know it, because I didn't see her at that time, and again I must accept it and give my opinion only by reason of experience.

Q. But you didn't learn of any unusual thing that she

had done during that period that she had not done prior to that time?

A. No.

Q. Now, do I understand, Doctor, that the settlement that was made by the Raladam Company with Mrs. Skardarasy was made after your examination and after your report on the case?

A. My dear sir, I have no knowledge of any settlement that was made with her at any time. I don't even now know that there was any settlement made.

Examiner Norwood: You made the examination and report to the Respondent?

A. Yes, sir. That is my only connection with the case. By Mr. Michael:

Q. Can you give the date of the report you made to the Raladam Company?

A. Yes, sir. My report is dated January 11, 1936, and I had seen her on the 9th of January, two days before.

Q. Now, to whom was your report made, to the Raladam Company direct, or to the attorneys?

A. To Mr. Gust.

Q. The attorney here?

A. Yes, sir.

Mr. Michael: That is all.

Mr. Gust: That is all, Doctor. That is my case.

I might say, if the Examiner please, that I endeavored to get permission to have another doctor examine Mrs. Skardarasy. Up to the present time that permission has not been forthcoming. Now, it may be that I will get it yet today. If I do, I will have the doctor here in the morning.

Examiner Norwood: All right. You have no further evidence?

Mr. Gust: I have no further proof unless I can get permission to examine Mrs. Skardarasy.

Examiner Norwood: The hearing will adjourn until ten o'clock tomorrow morning.

(Whereupon at 2:30 p. m. Friday, June 19, 1936, the hearing in the above entitled matter was adjourned to Saturday, June 20, 1936, at 10:00 o'clock, a. m.)

Saturday, June 20, 1936,  
10:00 o'clock, a.m.

(The hearing of the above-entitled cause was resumed pursuant to the adjournment.)

Examiner Norwood: The hearing will come to order, pursuant to adjournment on yesterday afternoon, to be reconvened in Room 722 Federal Building, Detroit, Michigan, at ten o'clock a. m., June 20, 1936.

Mr. Harry D. Michael appears for the Federal Trade Commission.

I will state for the record that Mr. Rockwell T. Gust, attorney for Respondent, telephoned me this morning and said that he had no further testimony to introduce or to offer and asked if it would be necessary for him to come down. I told him it would not be necessary, and that if any further testimony was contemplated by the Commission, he would be notified.

Mr. Michael, as I understand it, your case is closed?

Mr. Michael: I think so, Mr. Examiner, and I rather hope so, because I would like to bring the case to a conclusion; I am sure Mr. Hornibrook would, too.

However, since he has been prevented from being at this hearing here in Detroit on account of the dangerous illness of his wife, and since I have been unable to consult with him about the testimony offered, it might be the better precaution not to formally close the record at this time and

wait until we can consult with him and have a copy of the transcript of the testimony offered yesterday.

Now, I will do in that regard whatever the Examiner desires. If it would be better to close the record and petition to reopen, if we desired to, why I am willing for that to be done.

Examiner Norwood: Well, I told Mr. Gust that it was usually requested that the record be kept open for a few days for suggested corrections on the record, so that such corrections might be ordered in the order closing the case, and if it is agreeable to your suggestion then we will leave the case open to be closed by order without further formal notice other than the order closing the case and correcting the record if necessary.

Mr. Michael: That is merely by formal entry of written closing by the Examiner without calling a hearing?

Examiner Norwood: Without a further hearing; that is, it will be adjourned to reconvene on five days notice, or to be closed by order as may appear desirable and proper. Is that satisfactory?

Mr. Michael: Do I understand, Mr. Examiner, that Mr. Gust informed you that he did not desire to be present this morning, but that he authorized you to close the record so far as the introduction of evidence for the Respondent concerned, finally?

Examiner Norwood: That is correct.

The hearing is adjourned at 10:10 a. m. to reconvene on five days notice or close by order as stated.

(Whereupon at 10:10 a.m. June 20, 1936, the hearing in the above entitled matter was adjourned, without date.)

## ORDER CLOSING THE CASE

Pursuant to the order of adjournment and agreement of counsel at the last hearing in this case at Detroit, Michigan, on the 20th day of June, 1936, and in compliance with the order of the Federal Trade Commission, heretofore issued in this cause, the taking of testimony and the reception of evidence in the matter of Raladam Company, Docket No. 2406 is terminated and the case is hereby closed.

Within fifteen days after the receipt of the transcript of the testimony the Trial Examiner will make findings of fact and serve a copy thereof on the attorney for the Commission and on the attorney for the Respondent. Each party will have ten days after the receipt of the said findings in which to make exceptions thereto.

The dates for filing of briefs will be as follows: The Commission's attorney has twenty days from the date of the receipt of the findings of fact, and the attorney for the Respondent has twenty days from the date he receives the brief of the Commission's attorney. H

This at Washington, D. C., on the 27th day of July, 1936.

John W. Norwood,

Trial Examiner.





PROCEEDINGS IN THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

*Cause argued and submitted*

(November 15, 1940)

Before SIMONS, ALLEN, and ARANT, JJ.

This cause is argued by Rockwell T. Gust for Petitioner and by Martin A. Morrison for Respondent and is submitted to the court.

*Order restoring case to calendar*

(Entered January 17, 1941)

Owing to the death of Judge Arant, a member of the court before whom the above cause was argued,

It is ordered that the above cause be restored to the docket and set for reargument as soon as circumstances will permit and that counsel in this cause be notified at once of the entry of this order.

*Cause argued and submitted*

(April 8, 1941)

Before HICKS, SIMONS, and ALLEN, JJ.

This cause is argued by Rockwell T. Gust for Petitioner and by Martin A. Morrison for Federal Trade Commission and is submitted to the court.

*Decree*

(Entered October 7, 1941)

On petition to review and set aside order of the Federal Trade Commission.

This cause came on to be heard on the transcript of the record from the Federal Trade Commission, and was argued by counsel.

On consideration whereof, it is now hereby ordered and adjudged by this Court that the order of the Federal Trade Commission be and the same is hereby set aside.

*Opinion*

(Filed October 7, 1941)

United States Circuit Court of Appeals, Sixth Circuit

No: 8026

RALADAM COMPANY, PETITIONER

v.

FEDERAL TRADE COMMISSION, RESPONDENT

On Petition to Review and Set Aside Order of Federal  
Trade Commission

Decided October 6, 1941

Before HICKS, SIMONS, and ALLEN, Circuit Judges.

HICKS, Circuit Judge. For the second time the Raladam Company petitions this court to review and set aside an order of the Federal Trade Commission directing it to cease and desist from certain practices with reference to offering for sale, and sale and distribution, in interstate commerce, of a preparation known as Marmola and used in the treatment of obesity.

In the previous case [42 Fed. (2d) 430] we vacated the order of the Commission on the ground that the evidence failed to disclose the existence of competition within the meaning of the Act [15 U. S. C. Sec. 41 et seq.]; and on the further ground that it was not shown that the representations in the advertising of Marmola that it was a safe and scientific remedy were in fact false.

The Supreme Court affirmed the order *F. T. C. v. Raladam Co.*, [283 U. S. 643] on the ground that no substantial competition, present or potential, was shown by the proof or from necessary inference, to have been injured, or threatened with injury to a substantial extent by the use of the alleged unfair methods complained of. The court held that jurisdiction of the Commission to make the order was lacking in the absence of a showing of competition, and that the proceeding must be dismissed. The Supreme Court and this court refused to grant motions to modify the order to permit the taking of additional evidence on the question of injury to competitors. Thereupon the Commission filed its amended complaint charging petitioner with certain violations of the Act subsequently to the date of its cease and desist order in the first proceeding and in due course it issued an order requiring petitioner to cease and desist from making certain specified representations in its advertising of Marmola.

Petition for review was filed here on May 19, 1938, which was subsequent to an amendment of the Act effective March 21, 1938 (52 Stat. 112, 15 U. S. C. A. Sec. 41 et seq., 1940 Cum. Pocket Part). Under the amendment the Commission is not required to file a petition for an order of enforcement, this court having jurisdiction upon the filing of the petition to review the record. However, since the amended complaint was filed prior to the amendment, the violations charged, if we come to that question, must be construed in the light of the wording of the Act as of that time.

Petitioner contends that the issues here are res adjudicata. We do not agree thereto. This case involves a different time period and representations which raise issues other than whether Marmola is a safe and scientific remedy. Moreover, all that was decided by the Supreme Court was that the Commission had no jurisdiction to issue the order under the evidence presented. The holding of this court that it appeared that the safe and scientific nature of Marmola as a remedy for obesity was a matter of opinion rather than one for factual determination must add to the Supreme Court's opinion that there was no jurisdiction to issue the order in the first place. In the light of the ruling of the Supreme Court the assumption by that court that the advertisements of Marmola were dangerously misleading and that a proceeding to prevent their use was in the interest of the public, must be regarded by us as it was by the Supreme Court, i. e., simply an assumption for the purposes of its decision.

We must follow the Supreme Court upon the issue it decided, that of jurisdiction, unless the evidence in this case presents a radically different situation as to petitioner's competitors. We are bound to resolve the question of jurisdiction preliminarily to any consideration on the merits. In considering jurisdiction the Supreme Court stated that there are three distinct prerequisites for a cease and desist order, namely, (1) that the methods complained of are unfair; (2) that they are methods of competition in commerce; and (3) that a proceeding by the Commission to prevent a use of the methods appears to be in the interest of the public. In order to simplify its consideration of the second prerequisite, the court, as we have noted, assumed the existence of the first and third. As to the second, it said:

"Thus, the Commission is called upon first to determine, as a necessary prerequisite to the issue of a complaint, whether there is reason to believe that a given person, partnership, or corporation has been or is using any unfair method of competition in commerce; and that being determined in the affirmative, the Commission still may not proceed unless it further appear that a proceeding would be to the interest of the public, and that such

interest is specific and substantial. Federal Trade Comm. v. Klesner, 280 U. S. 19, 28. Unfair trade methods are not per se unfair methods of competition."

It continued that the word "competition" imported the existence of present or potential, substantial competition and that the unfair methods must be such as unjustly affected or tend to affect the business of these competitors; that—

"While it is impossible from the terms of the act itself, and in the light of the foregoing circumstances leading up to its passage, reasonably to conclude that Congress intended to vest the Commission with the general power to prevent all sorts of unfair trade practices in commerce apart from their actual or potential effect upon the trade of competitors, it is not necessary that the facts point to any particular trader or traders. It is enough that there be present or potential substantial competition, which is shown by proof, or appears by necessary inference, to have been injured, or to be clearly threatened with injury, to a substantial extent, by the use of the unfair methods complained of."

③ The court then applied these principles to the facts, saying:

"Findings of the Commission justify the conclusion that the advertisements naturally would tend to increase the business of respondent; but there is neither finding nor evidence from which the conclusion legitimately can be drawn that these advertisements substantially injured or tended thus to injure the business of any competitor or of competitors generally, whether legitimate or not. None of the supposed competitors appeared or was called upon to show what, if any, effect the misleading advertisements had, or were likely to have, upon his business. The only evidence as to the existence of competitors comes from medical sources not engaged in making or selling 'obesity cures,' and consists in the main of a list of supposed producers and sellers of 'antifat remedies' compiled from the files and records of the Bureau of Investigation of the American Medical Association, a list which appears to have been gathered mainly from newspapers and advertisements."

The court went on to say that it was impossible to determine from the record whether these "competitors" were injured by petitioner's advertising or whether they were in any sense real competitors, and if the preliminary assumption of competition is without foundation, jurisdiction to make the order fails.

On the issue of competition the Commission in Paragraph Three of its "Findings as to the Facts" had this to say:

During the time above mentioned, other individuals, firms, and corporations in various States of the United States are and have been engaged in the sale and distribution in interstate commerce of medicines, preparations, systems, methods, books of



instruction, and other commodities, articles and means designed, intended, and used for the purpose of enacting weight reduction. Such other individuals, firms, and corporations have caused and do now cause their said medicines, preparations, systems, methods, books of instruction, and other articles and means, when sold by them, to be transported from various States of the United States to, into, and through States other than the State of origin of the shipments thereof. Respondent has been, during the aforesaid time, in substantial competition, in the sale of Marmola, with such other individuals, firms, and corporations. Some of such competing products are sold direct to the consuming public while others are sold to wholesale and retail dealers through whom they are in turn sold to members of the public for their use.

"Respondent's preparation is in competition with all medical preparations sold and used for reducing purposes regardless of whether such preparations are of the so-called 'patent medicine' type or are pharmaceutical preparations which may be bought by members of the consuming public on their own initiative or on the prescription of a physician. Competing products include, also, the following: medical preparations which are used as adjuvants in the treatment of obesity, such as laxative salts; preparations sold and used for the purpose of effecting the lessening of the consumption of fat producing foods; and books of instruction on the subjects of diet or exercise, or both, intended and used for the purpose of effecting reduction by one or both of these means; \* \* \*

"Respondent, in its advertising matter, recognizes that competing products are not confined to those preparations or products of the same general character as Marmola by specifically advising and urging the use of Marmola for reducing, instead of the use of diet, exercises, purgatives, cathartics, salts, laxatives, and other methods used for effecting reduction."

These findings were based upon the testimony of two or three drug and chain store operators that they sold, over the counter, several patented reducing remedies in addition to Marmola. They testified that ordinarily these remedies were stocked after advertising had created a demand for them. There was slight evidence that one or two companies selling the patented remedies had had a recent decline in sales. Only one or two witnesses were expressly questioned as to whether they considered Marmola a competing preparation. One emphatically disclaimed any such competition. There was no substantial evidence supporting the formula of the Supreme Court "that these advertisements substantially injured or tended to injure the business of any competitor \* \* \*." It appears that the majority in

number of these "competitors" were likewise in the business of commercially exploiting obesity remedies by advertising them to the general public.

In the previous case we expressed our disbelief "that the machinery of the Commission was intended to give governmental aid to the protection of this kind of trade and commerce." The Supreme Court although not finding it necessary to decision, tentatively approved our view upon this feature.

We have greater difficulty with those "competitors" who have published books of instruction on the subject of diet or exercise, and those who are engaged strictly in the sale and distribution of ethical remedies which were advertised and otherwise made known to physicians, but even in these instances there was no substantial evidence that the Marmola advertising even tended to injure the sale of these publications and preparations. We find no evidence in the record upon which a substantial inference can be based that this was so. We cannot approve the finding of the Commission upon pure speculation. Marmola's sole connection with these distributees is through the slender thread that each has some relation to obesity reduction. These so-called "competitors" are not engaged in the sale of an apparently standardized product as in the case of *Federal Trade Commission v. Winsted Co.*, 258 U. S. 483. In the present case "the competitors" approached the treatment of obesity from widely divergent viewpoints. We cannot say that the class who consult physicians about their ailments or "who read up" thereon, were, or would be, drawn by this advertising into the class of those who have been deceived by nostrums held out to accomplish miracles of healing.

The order of the Commission is set aside.

#### United States Circuit Court of Appeals for the Sixth Circuit

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of *Raladam Company vs. Federal Trade Commission*, No. 8026, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 21st day of November A. D. 1941.

[SEAL]

J. W. MENZIES,

*Clerk of the United States Circuit  
Court of Appeals for the Sixth Circuit.*

## SUPREME COURT OF THE UNITED STATES

*Order allowing certiorari*

Filed February 9, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



No. —

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In the Supreme Court of the United States

OCTOBER TERM, 1941.

FEDERAL TRADE COMMISSION, PETITIONER

—RALADAM COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH  
CIRCUIT

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# **In the Supreme Court of the United States**

OCTOBER TERM, 1941

No. —

FEDERAL TRADE COMMISSION, PETITIONER

v.

RALADAM COMPANY

## **PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT**

The Solicitor General prays that a writ of certiorari be issued to review a decree of the Circuit Court of Appeals for the Sixth Circuit entered in this cause on October 7, 1941, which set aside an order of the Commission directing the respondent to cease and desist from certain alleged unfair methods of competition.

### **OPINION BELOW**

The opinion of the Circuit Court of Appeals (R. 781) is reported in 123 F. (2d) 34.

### **JURISDICTION**

The decree of the Circuit Court of Appeals was entered October 7, 1941 (R. 780). The jurisdic-

tion of this Court is invoked under Section 5 of the Federal Trade Commission Act, 38 Stat. 719, 15 U. S. C., sec. 45, and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

#### QUESTIONS PRESENTED

(1) Whether an order of the Federal Trade Commission prohibiting unfair methods of competition requires for its support direct proof of actual damage to particular competitors.

(2) Whether a court in reviewing an order of the Commission may disregard the statutory requirement that the findings of the Commission, when supported by testimony, shall be conclusive, by making its own independent appraisal of the testimony and of the inferences reasonably to be drawn therefrom.

#### STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, 38 Stat. 719, 15 U. S. C., sec. 45, provides in part as follows:<sup>1</sup>

Unfair methods of competition in commerce are hereby declared unlawful.

The commission is hereby empowered and directed to prevent persons, partnerships,

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<sup>1</sup> The Commission issued its order in this case prior to passage of the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C., Supp. V, sec. 45, which amended Section 5 by authorizing the Commission to prevent "unfair or deceptive acts or practices in commerce."



or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

\* \* \* the findings of the commission as to the facts, if supported by testimony, shall \* \* \* be conclusive.

#### STATEMENT

For many years respondent has been engaged in marketing a preparation for reducing weight called "Marmola". An order of the Federal Trade Commission issued in 1929 directing respondent to cease from making misleading representations in the sale of Marmola was held invalid in *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, upon the ground that there was no substantial evidence to show that any other products were sold in interstate commerce in competition with respondent's preparation and that, in the absence of such evidence, the Commission lacked jurisdiction to issue an order against unfair methods of "competition". The Court, however, stated (p. 646) that the evidence supported the finding that respondent's preparation "cannot be used generally with safety to physical health except under medical direction and advice."

The present proceeding was instituted in July 1935 by the filing of an amended complaint

against respondent (R. 44). After evidence had been taken, the Commission made detailed findings of fact (R. 16-39) and entered an order prohibiting certain specified misrepresentations (R. 40-43). Among the facts found by the Commission are:

Respondent sells its preparation in competition with many other articles and products designed to reduce weight. These competitive products, 26 of which are named, are chiefly patent medicines,<sup>2</sup> pharmaceutical products containing desiccated thyroid, and books of instruction on weight reduction. (R. 17-21.)

Marmola contains certain innocuous ingredients, others having a laxative effect, and desiccated thyroid. The latter is the only one actively affecting weight. The taking of thyroid increases the oxidation of all tissues of the body and when the tissues (including fatty tissue) are burned up more rapidly than they are restored by food, loss of weight results. But the taking of thyroid does not restore an inactive or underactive thyroid gland; it simply supplements the secretions of this gland. (R. 22.)

Most cases of overweight are caused by incorrect eating habits and less than 5% are due to

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<sup>2</sup> By "patent medicine" we mean a preparation advertised as a remedy and sold to the general public for use without a doctor's prescription.

thyroid deficiency. Where the latter is found to be the cause many physicians use desiccated thyroid as a treatment but they do so only if the patient is found to be free from any pathological condition making this treatment harmful or dangerous. Among the conditions which inhibit administration of thyroid are various heart defects, kidney diseases, pregnancy, and abnormal or diseased conditions of organs of the body. Only a trained and experienced person can determine whether obesity is due to thyroid deficiency, whether the prospective user's physical condition is such as to make it safe to administer thyroid, the amount of the dose, the effect it produces, and how long it should be continued. (R. 23-24.)

Respondent widely advertises its product (R. 36) and in this advertising makes various false and misleading representations, of which the following are typical: Thyroid deficiency is the usual cause of overweight (R. 24-25); all modern physicians use thyroid in the treatment of obesity; this medication has the support of world-wide medical opinion; it would probably be prescribed if the purchaser consulted a physician (R. 25-26); taking Marmola is the best way to reduce (R. 27-28); taking it restores the thyroid gland to normal and thus removes the cause of obesity (R. 28-29); all relevant information concerning Marmola and its effect which a prospective purchaser needs to have before deciding upon the use of Marmola is

fully and truthfully disclosed in respondent's advertising material (R. 30-36).

The foregoing false and misleading representations induced members of the public to purchase Marmola in preference to the products of competitors and diverted trade from such competitors (R. 36-37).

In making these findings, the Commission had before it the following evidence bearing upon competition:

The trade in Marmola is substantial, averaging between \$350,000 and \$400,000 a year (R. 107). Respondent does not sell through the mails<sup>3</sup> but sells either to wholesale druggists or to retail drug stores. ~~In~~ ~~neither~~ case sales to the consuming public are through the retail drug store (R. 90). Many other patent medicines advertised as effective in reducing weight are sold through the same trade channels as Marmola. One wholesale drug firm handling Marmola handled 11 other patented remedies<sup>4</sup> sold for reducing purposes (R. 257-267, 272). Another wholesale firm dealing in Marmola handled five other patent medicines<sup>5</sup> adver-

<sup>3</sup> Respondent's predecessor had discontinued mail sales of Marmola after the Post Office Department had objected to this use of the mails (R. 92-94).<sup>1</sup>

<sup>4</sup> Nitra Phen Fifties, Arbolene Tablets, Van Nay Tablets, Reducoids, Slendrets, Germania Herb Tea No. 14, Stardom's Hollywood Dietede No. 1, Jad Salts, Eskay's Dextrettes, Dietene, Bon Kora.

<sup>5</sup> Jad Salts, Van Nay Tablets, Dr. McCaskey's RX Tablets, Reducoids, Slendrets.

tised as remedies for excess weight (R. 239-243, 245-247, 254-255). There was a like situation in the retail field. One chain of retail drug stores (Liggett's) sold Marmola and eight other packaged antiobesity remedies "side by side over the counter (R. 474-482). Another such chain sold Marmola and one other like patented remedy (R. 333-335).

These same wholesale and retail druggists sold various pharmaceutical products containing desiccated thyroid which are advertised only to the medical profession and are ordinarily bought by consumers on a doctor's prescription (R. 252-254, 270-272, 339, 481).

Various books advertised as setting forth systems or methods for reducing weight have been widely sold in interstate commerce (R. 274-275, 416-418, 420-423, 488-490):

From this evidence that other obesity cures were sold to the public through the same outlets, the Commission inferred as a fact that the producers of such other products were in competition with respondent and that they would be injured by respondent's misrepresentations (R. 36-37).

The court below set aside the Commission's order upon the ground that, under the tests laid down in *Federal Trade Commission v. Raladam*,

\* Van Noy Tablets, Bon Kōra, Cole's No. 19, Vegetoids, Eliphat, Retardo, Phytoroides, Dietene.

*Co.*, 283 U. S. 643, there was no substantial evidence to support the Commission's finding that respondent's misrepresentations were injurious to competitors. (R. 784-785). What the Court apparently regarded as a fatal defect under this decision was the absence of any direct testimony that particular products were competitive and the absence of direct proof of actual damage to particular competitors. The court, while purporting to set forth the evidence relevant to the question of competition, ignored most of the evidence to which we have previously referred.

#### SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In holding that there was no substantial evidence to support the Commission's finding that respondent's misrepresentations were injurious to competitors.

(2) In disregarding the statutory provision that the findings of the Commission, if supported by testimony, shall be conclusive.

(3) In setting aside the order of the Commission.

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<sup>7</sup> Immediately preceding the statement that there was "no substantial evidence supporting the formula of the Supreme Court" in the *Raladam* case, the court said (p. 784): "There was slight evidence that one or two companies selling the patented remedies had had a recent decline in sales. Only one or two witnesses were expressly questioned as to whether they considered Marmola a competing preparation. One emphatically disclaimed any such competition."



## REASONS FOR GRANTING THE WRIT

1. We submit that the decision below is in conflict with *Federal Trade Commission v. Raladam Co.*, 283 U. S. 647. That case held that Section 5 of the Trade Commission Act does not authorize the Commission to prevent unfair trade practices in commerce "apart from their actual or potential effect upon the trade of competitors" and that if, as in that case, the evidence leaves such effect "without proof" and within the realm of mere "conjecture," the Commission lacks jurisdiction to act.\* But the Court was careful to state that the evidence need not identify the competitors injured and need not establish specific injury—that it is sufficient if the showing as to competition reasonably warrants the inference that the unfair trade practices will adversely affect the trade of competitors. The Court said (p. 651)—

\* \* \*, it is not necessary that the facts point to any particular trader or traders. It is enough that there be present or *potential* substantial competition, which is shown by proof, or *appears by necessary inference*, to have been injured, or *to be clearly threat-*

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\* There the sole evidence concerning competition consisted of a list of various alleged antifat remedies which an officer of the American Medical Association had prepared "within the last two days" and testimony by this witness that he had recently been able to purchase six such remedies in Chicago drug stores. See the *Raladam* opinion, p. 653, and Record in that case, pp. 111-112.

ened with injury, to a substantial extent, by the use of the unfair methods complained of. [Italics supplied.]

In the present case the court below apparently misconstrued the statement in the *Raladam* case (p. 653):

None of the supposed competitors appeared or was called upon to show what, if any, effect the misleading advertisements had, or were likely to have, upon his business.

All that this means is that the absence of such evidence is a relevant consideration, but this Court neither held nor implied that evidence of this character is prerequisite to a valid finding of injury to competitors.

The decision below is also in conflict with *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, where the evidence showed that respondent's labels deceived members of the general public as to the material of which its underwear was composed and that there were other manufacturers selling underwear not thus mislabeled. This Court viewed injury to competitors as not only a permissible but a necessary inference from these facts.<sup>9</sup> It said (p. 494) that the Commis-

<sup>9</sup> In that case there was not even a finding that respondent's practices diverted trade from, or otherwise injured, competitors. The Commission limited its findings to the basic facts, from which it drew the conclusion that the practices in question were unfair methods of competition. See Record in the *Winsted* case, pp. 45-51.

sion was justified in concluding that respondent's practices constituted unfair methods of competition since the business of its trade rivals was "necessarily affected by" its mislabeling.

2. The decision below is in conflict with decisions of four other circuit courts of appeals on the same matter. In two cases (each involving misrepresentation as to the therapeutic effect of a product) the Circuit Court of Appeals for the Ninth Circuit has held that where the evidence shows the sale in commerce of other products serving the same purpose as the misrepresented product, injury to competitors may be properly inferred and direct proof of injury is not requisite to the validity of the Commission's order. *Electro Thermal Co. v. Federal Trade Commission*, 91 F. (2d) 477, 480, certiorari denied, 302 U. S. 748; *Alberty v. Federal Trade Commission*, 118 F. (2d) 669, 670-671, certiorari denied, October 13, 1941, No. 104, this Term. The court in the former case said:

In this case there are definitely identified parties manufacturing and selling in interstate commerce a device adapted to the same purposes as is the petitioner's. . . .

What the record lacks is any direct evidence to the effect that petitioner's misleading advertising claims diverted any business from its competitors. This, however, is not required by the decision in the *Raladam Case*, and would in many cases

be impossible to prove. It would seem to be sufficient to show actual or potential competition and unfair trade practices which reasonably tend to give the perpetrator an advantage in such competition. \* \* \*

The same test has been applied by three other circuit courts of appeals. *E. Griffiths Hughes, Inc., v. Federal Trade Commission*, 77 F. (2d) 886, 888 (C. C. A. 2), certiorari denied, 296 U. S. 617; *Federal Trade Commission v. Artloom Corp.*, 69 F. (2d) 36, 38 (C. C. A. 3); *International Art Co. v. Federal Trade Commission*, 109 F. (2d) 393, 397 (C. C. A. 7); *Allen B. Wrisley Co. v. Federal Trade Commission*, 113 F. (2d) 437, 442 (C. C. A. 7).

3. The issue as to which this conflict has arisen is of great importance in the administration of the Federal Trade Commission Act. Practically every proceeding under the Act in which a respondent is charged with engaging in unfair methods of competition presents the question of the character of the proof necessary in order to support a finding of injury to competitors. In most cases definite proof that misrepresentations have caused particular consumers to purchase one product rather than another is difficult to obtain, although proof of the existence of competition leads to the obvious inference that misrepresentations will achieve their purpose of diverting trade from competitors.

The importance of an authoritative determination by this Court which will remove the doubt and uncertainty created by the decision below is not materially lessened by the recent amendment of Section 5 by the Act of March 21, 1938, 52 Stat. 111, authorizing the Commission to prohibit "unfair or deceptive acts or practices in commerce." While the purpose of this amendment was to eliminate the necessity of showing adverse effect upon competitors in every proceeding under Section 5, the phrase "unfair methods of competition" remains in the law and many pending proceedings are, and many future ones will be, based solely upon this phrase.<sup>10</sup>

The Commission has informed the Department of Justice that, apart from the order here involved, there are now outstanding 29 orders issued by it under Section 5 of the Trade Commission Act, as well as 50 stipulations to which it is a party, prohibiting misrepresentation in the sale of products advertised as efficacious remedies, devices, or means for reducing weight. *E. g., E. Griffiths Hughes, Inc. v. Federal Trade Commission*, 77 F.

<sup>10</sup> The Commission has informed the Department of Justice that there are seven cases pending in court and ten proceedings pending before the Commission in which the complaint was issued prior to March 21, 1938, and that there are nine cases pending in court and forty-nine proceedings pending before the Commission in which the complaint, although issued after March 21, 1938, alleged, solely, use of unfair methods of competition.

(2d) 886, 888 (C. C. A. 2), certiorari denied, 296 U. S. 617. It would be a serious miscarriage of justice if, in the face of these outstanding prohibitions against others engaged in the same type of trade, respondent—probably the leading concern in this field of activity—should be permitted to continue its misrepresentations because of an erroneous court decision. The fact that it has been found that respondent's representations are likely to result in injury to the health of purchasers of its product (R. 32-33) is an additional reason for the granting of the writ of certiorari.

4. We submit that the decision below constitutes, in substance if not in form, a serious breach of the statutory provision that the findings of the Commission, "if supported by testimony," shall be conclusive. Furthermore, it is for the Commission, not the reviewing court, to determine the "inferences reasonably to be drawn" from the admitted or established facts. *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 63. Adherence to these requirements in form but departure therefrom in substance has been sharply condemned by this Court. In *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73, it said:

In form the court determined that the finding of unfair competition had no support whatever. In fact what the court did was to make its own appraisal of the testimony, picking and choosing for itself among un-



certain and conflicting inferences. Statute and decision (*Federal Trade Comm'n v. Pacific States Trade Assn.*, 273 U. S. 52, 61, 63), forbid that exercise of power.

In the instant case the Commission inferred, from evidence that other obesity cures were sold in the same markets, that respondent's misrepresentations would be harmful to competitors. This conclusion would appear to be inescapable, and yet the court below held not only that the inference was not a permissible one but that it lacked substantial support.

While certiorari will ordinarily not be granted to review alleged error in the determination of questions of fact, this Court has indicated that it is a matter of "high importance" that the courts give due regard to a statutory command that the findings of an administrative body be taken as conclusive when they are supported by evidence. *National Labor Relations Board v. Waterman Steamship Corp.*, 309 U. S. 206, 208-209. In that case this Court said, in explaining its grant of certiorari to review such alleged error:

Not by accident, but in line with a general policy, Congress has deemed it wise to entrust the finding of facts to these specialized agencies. It is essential that courts regard this division of responsibility which Congress as a matter of policy has embodied in the very statute from which the Court of Appeals derived its jurisdiction to act. \* \* \*

We submit that even if there were no other error worthy of review in the instant case, the error of the court below in substituting its judgment upon the facts for that of the Commission presents, under the circumstances, a question meriting review.

CONCLUSION

✓ The petition for a writ of certiorari should be granted.

Respectfully submitted.

CHARLES FAHY,  
*Solicitor General.*

DECEMBER 1941.





No. 826

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In the Supreme Court of the United States

OCTOBER TERM, 1941

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FEDERAL TRADE COMMISSION, PETITIONER

RALADAM COMPANY

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WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

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BRIEF FOR THE FEDERAL TRADE COMMISSION

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# In the Supreme Court of the United States

OCTOBER TERM, 1941

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No. 826

FEDERAL TRADE COMMISSION, PETITIONER

v.

RALADAM COMPANY

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

---

BRIEF FOR THE FEDERAL TRADE COMMISSION

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## OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 781) is reported in 123 F. (2d) 34. The findings of the Commission appear at R. 16-39.

## JURISDICTION

The decree of the Circuit Court of Appeals was entered October 7, 1941 (R. 780). The petition for writ of certiorari was filed on December 30, 1941, and was granted on February 9, 1942. The jurisdiction of this Court rests upon Section 5 of the Federal Trade Commission Act, 15 U. S. C., sec. 45, and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

## QUESTIONS PRESENTED .

(1) Whether the evidence supports the Commission's findings that respondent sells its product in competition with numerous other products and, that its misrepresentations tend to divert trade from competitors.

(2) Whether Section 5 of the Federal Trade Commission Act requires, in addition to proof and findings that unfair methods have been used in competition in interstate commerce, proof or findings that the unfair methods are injurious to competitors.

(3) Whether any issue in the present proceeding is rendered *res judicata* by the judgment entered in *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643.

(4) Whether denial of applications for leave to adduce additional evidence in the first *Raladam* case precludes the bringing of the present proceeding.

## STATUTE INVOLVED

Section 5 of the Federal Trade Commission Act, 38 Stat. 719, provides in part as follows:<sup>1</sup>

Unfair methods of competition in commerce are hereby declared unlawful.

<sup>1</sup> The Commission issued its order in this case prior to passage of the Act of March 21, 1938, 52 Stat. 111, 15 U. S. C. sec. 45, which amended Section 5 by authorizing the Commission also to prevent "unfair or deceptive acts or practices in commerce."



The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. \* \* \*

If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. \* \* \*

\* \* \* The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional

evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper.

#### STATEMENT

For many years respondent has been engaged in marketing a preparation for reducing weight called "Marmola". In a proceeding under Section 5 of the Federal Trade Commission Act the Commission in 1929 issued an order directing respondent to cease from making, in connection with the sale of Marmola, certain representations which the Commission found to be misleading. This order was held invalid in *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, upon the ground that there was in that case no evidence before the Commission to show that any products competitive with respondent's preparation were sold in interstate commerce or that any competitor might be injured as a result of respondent's misrepresentations and that in the absence of such evidence the Commission lacks jurisdiction, in a proceeding under Section 5, to issue an order prohibiting the use of unfair methods of "competition".

Thereafter the Commission instituted the present proceeding in May 1935 by filing a complaint (R. 2), which was subsequently amended in July 1935 (R.

44), charging that respondent had, since April 17, 1929,<sup>2</sup> been promoting the sale of Marmola by means of certain specified false and misleading representations (R. 49-53). The misrepresentations thus charged differ materially from those charged and found in the prior proceeding against respondent (R. 38-39). See p. 31, *infra*. After the taking of evidence on its complaint, the Commission made detailed findings of fact (R. 16-39) and, on the basis of these findings, issued an order directing respondent to cease from making certain specified representations in connection with the sale of Marmola in interstate commerce (R. 40-43).

Among the facts found by the Commission are the following:

Respondent sells its preparation in competition with many other articles and products designed to reduce weight. These competitive products, 26 of which are named, are chiefly patent medicines,<sup>3</sup> pharmaceutical products containing desiccated thyroid, and books of instruction on weight reduction. (R. 17-21.)

Marmola contains certain innocuous ingredients, others having a laxative effect, and desiccated thyroid. The latter is the only one actively affecting

<sup>2</sup> April 17, 1929, is the date on which the Commission's order in the prior proceeding was served on respondent, the order itself having been issued on April 13, 1929 (R. 38).

<sup>3</sup> By "patent medicine" we mean a preparation advertised as a remedy and sold to the general public for use without a doctor's prescription.

weight. The taking of thyroid increases the oxidation of all tissues of the body and when the tissues (including fatty tissues) are burned up more rapidly than they are restored by food, loss of weight results. But the taking of thyroid does not restore an inactive or underactive thyroid gland; it simply supplements the secretions of this gland. (R. 22.)

Most cases of overweight are caused by incorrect eating habits and less than 5% are due to thyroid deficiency. Where the latter is found to be the cause many physicians use desiccated thyroid as a treatment but they do so only if the patient is found to be free from any pathological condition making this treatment harmful or dangerous. Among the conditions which inhibit administration of thyroid are various heart defects, kidney diseases, pregnancy, and abnormal or diseased conditions of organs of the body. Only a trained and experienced person can determine whether obesity is due to thyroid deficiency, whether, in any case, the prospective user's physical condition is such as to make it safe to administer thyroid, the amount of the dose, the effect it produces, and how long it should be continued. (R. 23-24.)

Respondent widely advertises its product (R. 36) and in this advertising makes various false and misleading representations, of which the following are typical: Thyroid deficiency is the usual cause of overweight (R. 24-25); all modern physicians use thyroid in the treatment of obesity; this

medication has the support of world-wide medical opinion; it would probably be prescribed if the purchaser consulted a physician (R. 25-26); taking Marmola is the best way to reduce (R. 27-28); taking it restores the thyroid gland to normal and thus removes the cause of obesity (R. 28-29); all relevant information concerning Marmola and its effect which a prospective purchaser needs to have before deciding upon the use of Marmola is fully and truthfully disclosed in respondent's advertising material (R. 30-36).

The foregoing false and misleading representations induced members of the public to purchase Marmola in preference to the products of competitors and diverted trade from such competitors (R. 36-37).

In making these findings, the Commission had before it the following evidence bearing upon competition:

The trade in Marmola is substantial, averaging between \$350,000 and \$400,000 a year (R. 107). Respondent does not sell through the mails<sup>4</sup> but sells either to wholesale druggists or to retail drug stores. In either case sales to the consuming public are through the retail drug store (R. 90). Many other patent medicines advertised as effective in reducing weight are sold through the same trade channels as Marmola. One wholesale drug firm

<sup>4</sup> Respondent's predecessor had discontinued mail sales of Marmola after the Post Office Department had objected to this use of the mails (R. 92-94).

handling Marmola handled 11 other patented remedies<sup>5</sup> sold for reducing purposes (R. 257-267, 272). Another wholesale firm dealing in Marmola handled five other patent medicines<sup>6</sup> advertised as remedies for excess weight (R. 239-243, 245-247, 254-255). There was a like situation in the retail field. One chain of retail drug stores (Liggett's) sold Marmola and eight other packaged antiobesity remedies side by side over the counter (R. 474-482). Another such chain sold Marmola and one other like patented remedy (R. 333-335). One concern engaged in selling through the mails two packaged remedies for obesity had been selling one of them (containing thyroid) since 1902 or 1903 and the other (not containing thyroid) for nine or ten years (R. 113-114, 116).

These same wholesale and retail druggists sold various pharmaceutical products containing desiccated thyroid which are advertised only to the medical profession and are ordinarily bought by consumers on a doctor's prescription (R. 252-254, 270-272, 339, 481).

Various books advertised as setting forth systems or methods for reducing weight have been widely

<sup>5</sup> Nitra Phen Fifties, Arbolene Tablets, Van Nay Tablets, Reducoids, Slendrets, Germania Herb Tea No. 14, Stardom's Hollywood Dietade No. 1, Jad Salts, Eskay's Dextrettes, Dietene, Bon Kora.

<sup>6</sup> Jad Salts, Van Nay Tablets, Dr. McCaskey's RX Tablets, Reducoids, Slendrets.

<sup>7</sup> Van Nay Tablets, Bon Kora, Cole's No. 19, Vegetoids, Eliphat, Retardo, Phytoroides, Dietene.



sold in interstate commerce (R. 274-275, 416-418, 420-423, 488-490).

From the foregoing and other like evidence showing that other preparations and other products were being sold to the public on the basis of the same appeal made by respondent, namely, that they would provide a means or remedy for reducing excess weight, and particularly from the evidence showing that many of these remedies were sold through the same trade channels as respondent's preparation, the Commission found that the producers thereof were in competition with respondent (R. 17-18) and drew the factual inference that respondent's misrepresentations tended to induce members of the public to purchase Marmola in preference to the products of such competitors and to divert trade from them (R. 36).

There was ample evidence to support the Commission's findings that the representations made by respondent in advertising its product were false and misleading.\* Since respondent in its briefs in the court below failed to raise any question as to

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\* See the testimony of Doctors Soskin (R. 164-229), Miller (R. 229-238), Thompson (R. 292-307), Voegtlin (R. 308-333), Dowling (R. 341-373), and Newburgh (R. 720-754). The advertisements containing the misrepresentations are original exhibits not set forth in the printed record. (See note 11, *infra*, p. 16.) Although the first *Raladam* case in this Court was limited to the question of the jurisdiction of the Commission, the opinion states (283 U. S., at 646): "Findings, supported by evidence, warrant the conclusion that the preparation is one which cannot be used generally with safety to physical health except under medical direction and advice."

the sufficiency of the evidence supporting these findings, it is unnecessary to refer to such evidence here.\*

The court below set aside the Commission's order upon the ground that, under the tests laid down in *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, there was no substantial evidence to support the Commission's finding that respondent's misrepresentations were injurious to competitors (R. 784-785). What the court apparently regarded as a fatal defect was the absence of any direct testimony that particular products were competitive and the absence of direct proof of actual damage to particular competitors. The court, while purporting to set forth the evidence relevant to the question of competition, ignored most of the evidence to which we have previously referred.

#### SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In holding that there was no substantial evidence to support the Commission's finding that respondent's misrepresentations were injurious to competitors.

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\* Points not briefed are treated as abandoned. *Twachtman v. Connelly*, 106 F. (2d) 501, 509 (C. C. A. 6); *Winter-ton Gum Co. v. Auto Sales, etc., Co.*, 211 Fed. 612, 618 (C. C. A. 6); *Home Benefit Association v. Sargent*, 142 U. S. 691, 694-695; *Donnelley v. United States*, 276 U. S. 505, 511; *Radius v. Travelers Ins. Co.*, 87 F. (2d) 412, 413 (C. C. A. 9); *Andrews v. United States*, 108 F. (2d) 511, 515 (C. C. A. 4). Points not presented to the Circuit Court of Appeals are not available to respondent here.

(2) In disregarding the statutory provision that the findings of the Commission, if supported by testimony, shall be conclusive.

(3) In setting aside the order of the Commission.

#### SUMMARY OF ARGUMENT

##### I

A. The Commission's findings as to competition and injury to competitors are supported by evidence. There could hardly be more convincing proof of competition than the evidence before the Commission showing that many other products of the same character and catering to the same consumer demand as respondent's preparation, are sold to the general public. Furthermore, the evidence shows that these products are marketed through the same trade channels as respondent's preparation. The evidence likewise fully warrants the inference of fact made by the Commission that the misrepresentations by which respondent promoted the sale of its preparation tended to divert trade from its competitors. Since this Court has, upon like facts, declared that injury to competitors is necessarily to be inferred, the inference of injury made by the Commission in this case must be regarded as at least permissible. *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483. Under the statutory provision making the findings of the Commission, if supported by evidence, conclusive, the inferences "reasonably" drawn from the evidence by the Commission are binding.

B. The statute makes unlawful "unfair methods of competition". By its terms, therefore, it requires only a showing that unfair methods have been used and that they have been used in competition with others. To hold that the statute also requires a showing of probable injury to competitors is to read this requirement into the statute by implication. We submit that such an interpretation is not warranted since it tends to defeat rather than to effectuate the purposes of the legislation. The object of the act is to stop unfair methods of competition in their incipency, even before injury may have occurred. Accordingly, to interpret the statute as authorizing the Commission to proceed only when it can make a showing of injury tends to thwart attainment of the legislative objective.

The decisions of this Court prior to *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, appear to interpret the statute as not requiring a showing of injury to competitors. To the extent that a contrary view is expressed in the *Raladam* case, this view was not necessary to the decision.

## II

A. The judgment entered in *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, is not an absolute bar to the present proceeding because the proceeding is not upon the same claim as that made in the earlier case and does not present the same questions as were there determined. The respective claims involve conduct in different periods of

time as well as materially different representations. Moreover, the prior case adjudged only the insufficiency of the particular evidence introduced in that proceeding; the present case concerns the sufficiency, not of that evidence, but of the totally different evidence introduced in this proceeding.

B. Inasmuch as this case is an entirely new proceeding, the orders denying leave to adduce additional evidence in the first *Raladam* case have no pertinence.

#### ARGUMENT

#### I

THERE IS EVIDENCE TO SUPPORT THE COMMISSION'S FINDINGS AND CONCLUSION THAT THE UNFAIR METHODS USED BY RESPONDENT IN PROMOTING THE SALE OF ITS PRODUCT WERE UNFAIR METHODS OF "COMPETITION"

*A. There is Ample Support in the Evidence for the Findings that Respondent Sells its Product in Competition with Numerous Other Products and that its Misrepresentations Tend to Divert Trade from Competitors*

*Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, held that Section 5 of the Federal Trade Commission Act does not authorize the Commission to prevent unfair trade practices in commerce "apart from their actual or potential effect upon the trade of competitors", and that if, as in that case, the evidence leaves such effect "without proof" and within the realm of mere "conjecture,"

there is a failure of proof as to a fact essential to the Commission's jurisdiction; namely, "the existence of competition." The Court in that case recognized, however, that the statute does not require that the evidence identify particular competitors or establish specific injury—that it is sufficient if the evidence reasonably warrants the inference that there is competition and that the respondent's unfair trade practices are calculated to injure others engaged in like trade. The Court said (p. 649):

It is obvious that the word "competition" imports the existence of present or *potential* competitors, and the unfair methods must be such as injuriously affect or *tend thus to affect* the business of these competitors—that is to say, the trader whose methods are assailed as unfair must have present or *potential* rivals in trade whose business will be, *or is likely to be*, lessened or otherwise injured: [Italics supplied.]

It also said (p. 651):

\* \* \* it is not necessary that the facts point to any particular trader or traders. It is enough that there be present or *potential* substantial competition, which is shown by proof, or *appears by necessary inference*, to have been injured, or *to be clearly threatened with injury*, to a substantial extent, by the use of the unfair methods complained of. [Italics supplied.]



We submit that the evidence in the present case fully satisfies the above tests. In support of the Commission's finding of competition there is not only proof that some 19 other packaged preparations were currently sold to the public as remedies for excess weight, but that 18 of these preparations were marketed through the same wholesale or retail outlets, or both, as Marmola (*supra*, pp. 7-8). There could hardly be more convincing proof of competition than evidence showing that other products are sold to the public which are of the same general character—referred to by the Commission (R. 18) as “preparations \* \* \* of the so-called ‘patent medicine’ type”—and which make the same consumer appeal—that they will effect weight reduction. Obviously those engaged in supplying the same consumer demand, and offering a like product, are in competition. The very number of the anti-obesity remedies being marketed and the substantial sales over a period of many years by some of the concerns catering to the consumer demand for remedies for excess weight evidence the competition existing in this field.<sup>10</sup>

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<sup>10</sup> At the present hearing respondent's annual sales were between \$350,000 and \$400,000 (R. 107). At the time of the hearing in the prior proceeding its sales during the two preceding years were about \$600,000 a year and before that they had been about \$700,000 (Record in first *Raladam* case, p. 34). Respondent and its predecessor have been in business since 1907 (*id.*, pp. 38, 46-47).

Another concern which has been marketing an antiobesity remedy since 1902 or 1903 formerly had sales of over \$500 a day (R. 113-115).

There was also evidence that books advertised to the public as setting forth systems for weight reduction by means of diet and exercise were widely sold in interstate commerce (*supra*, pp. 8-9). Respondent itself recognized their competitive character by specifically urging and advising in its advertising the use of Marmola for effecting weight reduction instead of diet, exercise, or other methods (Fig. 3, R. 21).<sup>11</sup> The court below erroneously substituted its judgment upon the facts for that of the Commission (as well as for that of respondent) and concluded that books of instruction on weight reduction were not competitive. It declared that it "cannot say" that those who "read up" on their ailments come within the class of those "deceived by nostrums held out to accomplish miracles of healing" (R. 785).

The evidence likewise fully warrants the Commission's finding that respondent's misrepresentations tend to injure competitors. When a concern is marketing its product in competition with others and promotes its sales by misrepresentation, the inference would seem inescapable that its sales will, or at least tend to, divert trade from its competitors. In fact, this Court has expressly declared that under

<sup>11</sup> See Commission Exhibits 3A, 3H, 3K, 4A, 4C, 4E, 5A, 5C, 5G, 5H, 5-O, 6A, 6B, 6G, 8A, 20, (Original). By stipulation of the parties, these exhibits and all others have been omitted from the printed record and treated as physical exhibits (R. 71).

such circumstances injury to competitors is necessarily to be inferred.<sup>11</sup> In *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, the evidence showed that respondent sold its product under deceptive labels and that like products, not thus mislabeled, were sold in interstate commerce, but the Commission made no finding that respondent's unfair practices diverted trade from competitors.<sup>12</sup> This Court, in sustaining the order of the Commission, said (p. 494) that the Commission was justified in concluding that the respondent's mislabeling constituted an unfair method of competition since the business of its trade rivals was "necessarily affected by" that practice.<sup>13</sup>

Since the *Raladam* decision four other circuit courts of appeals in seven cases,<sup>14</sup> and indeed the

<sup>12</sup> The Commission's findings merely set forth the facts as to competition and as to deception, followed by its conclusion, substantially in the words of the statute, that the mislabeling was an unfair method of competition (Record in the *Winsted* case, pp. 45-51).

<sup>13</sup> In a case decided four months before its decision in the case at bar, the court below itself declared that "when misleading advertisements attract customers by means of deception perpetrated by the advertiser, it is presumed that business is thereby unfairly diverted from a competitor who truthfully advertises his process, method or goods. *Federal Trade Commission v. Winsted Hosiery Company, supra.*" *Ford Motor Co. v. Federal Trade Commission*, 120 F. (2d) 175, 182 (C. C. A. 6th), certiorari denied October 20, 1941, No. 580, this Term.

<sup>14</sup> *E. Griffiths Hughes, Inc. v. Federal Trade Commission*, 77 F. (2d) 886, 888 (C. C. A. 2), certiorari denied, 296 U. S. 617; *Federal Trade Commission v. Artloom Corp.*, 69 F.

Sixth Circuit itself,<sup>15</sup> have held that evidence showing (1) use of an unfair method in marketing a product and (2) the sale in commerce of other like products satisfies the requirements of the statute without proof of injury to competitors other than that to be inferred from these facts. In the *Electro Thermal* case, cited below, the Circuit Court of Appeals for the Ninth Circuit explained its ruling as follows:

In this case there are definitely identified parties manufacturing and selling in interstate commerce a device adapted to the same purposes as is the petitioner's. \* \* \*

What the record lacks is any direct evidence to the effect that petitioner's misleading advertising claims diverted any business from its competitors. This, however, is not required by the decision in the *Raladam Case*, and would in many cases be impossible to prove. It would seem to be sufficient to show actual or potential competition and unfair trade practices which

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(2d) 36, 38 (C. C. A. 3); *International Art Co. v. Federal Trade Commission*, 109 F. (2d) 393, 397 (C. C. A. 7); *Allen B. Wrisley Co. v. Federal Trade Commission*, 113 F. (2d) 437, 442 (C. C. A. 7); *National Candy Co. v. Federal Trade Commission*, 104 F. (2d) 999, 1006 (C. C. A. 7), certiorari denied, 308 U. S. 610; *Electro Thermal Co. v. Federal Trade Commission*, 91 F. (2d) 477, 480 (C. C. A. 9), certiorari denied, 302 U. S. 748; *Alberty v. Federal Trade Commission*, 118 F. (2d) 669, 670-671 (C. C. A. 9), certiorari denied, October 13, 1941, No. 104, this Term.

<sup>15</sup> See *Ford Motor Co. v. Federal Trade Commission*, *supra*, note 13.

reasonably tend to give the perpetrator an advantage in such competition.

To the extent that, under the views expressed in the *Raladam* case, there must be a showing of probable injury to competitors,<sup>16</sup> the showing required is merely that there be sufficient evidence to support an inference by the Commission that the unfair practices will probably be harmful to competitors. The statute makes the Commission's findings as to the facts, "if supported by testimony," conclusive, and it is for the Commission, not the reviewing court, to determine the "inferences reasonably to be drawn" from the admitted or established facts (*Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 63).<sup>17</sup> This Court has said that the statute therefore forbids a reviewing court "to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences" (*Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73). Such an exercise of power is nonetheless unauthorized because the court in form deter-

<sup>16</sup> We later contend that the statute does not require a showing of injury or probable injury to competitors (*infra*, pp. 24-28).

<sup>17</sup> See to the same effect, under similar statutory provisions, *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 261, 271; *National Labor Relations Board v. Falk Corp.*, 308 U. S. 453, 461; *National Labor Relations Board v. Link-Belt Company*, 311 U. S. 584, 597.

mines that a finding of the Commission is without support in the evidence (*ibid.*).

In the *Winsted* case this Court treated as obvious the effect of misrepresentations upon the business of competitors, despite the absence of any finding thereon by the Commission. Validity of the inference thus drawn can probably be sustained as a matter of common knowledge. And yet the court below has not merely denied the correctness of this conclusion but has in effect held a Commission inference to that effect to be completely unreasonable.

Although determination of what methods of competition are "unfair" within the meaning of the statute may present a question of law for the courts (*Federal Trade Commission v. Keppel & Bro., Inc.*, 291 U. S. 304, 314), whether there is competition and whether competitors are likely to suffer from the unfair practices which have been employed are questions of fact.<sup>15</sup> The Commission's findings on these matters are therefore

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<sup>15</sup> They were so treated in *Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 214-215, 216-217. In that case the Court summarized the Commission's findings, including those as to competition and injury to competitors, and, after noting that these findings were "supported by evidence," adopted them as the basis upon which the validity of the Commission's order was to be determined.

The Commission's findings on analogous questions, such as whether certain practices tend "to lessen competition and to fix uniform prices" and whether certain representations are deceptive, have been likewise viewed as findings of fact



within the statutory provision making its factual findings, if supported by evidence, conclusive.

One other subsidiary question relating to the sufficiency of the evidence may be noted. The court below appears to have been of the opinion that the evidence showing competition with producers of other "patent medicines" was to be ignored (R. 784-785), presumably upon the theory (1) that this was a disreputable type of trade and (2) that the statute does not apply if the only competitors are themselves engaged in disreputable trade.

This view, even if it were correct, would still leave the Commission's findings supported by the evidence showing competition by manufacturers of other products for reducing weight, and the Commission found that there were competitors of respondent who do not misrepresent the products which they sell (R. 36-37).<sup>19</sup> But the reason given for rejecting the evidence respecting the competi-

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which a reviewing court is not at liberty to reject upon the basis of the court's independent appraisal of the weight of the evidence. *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, 61-63; *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 116-117.

<sup>19</sup> There was evidence that thyroid preparations, sold through pharmacists on physicians' prescriptions, were not advertised at all to the general public but only to the medical profession (R. 135-137, 414, 452, 458, 467-468, 473).

tion of patented antiobesity remedies rests not only upon an erroneous interpretation of the statute but also upon an unwarranted and erroneous assumption as to the facts.

We submit that it would be improper to adopt a construction of the statute (for which its language and legislative history lend no support) which would make its application depend upon the relative respectability or ethical standards of the trade in which the particular respondent is engaged. If all members of an industry engage in unfair methods of competition, the statute does not immunize the industry but rather permits the Commission to proceed against all the offenders.<sup>20</sup>

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<sup>20</sup> The court below stated that this Court, in the first *Raladam* decision, "tentatively approved our view upon this feature" (R. 785). In its opinion this Court stated (283 U. S., at 652):

The court below thought that the trade to be protected "was that legitimate trade which was entitled to hold its own in the trade field without embarrassment from unfair competition." There is much force in this conception of the act, and the language just quoted from the *Winsted* case seems inferentially to lend it support. Certainly, it is hard to see why Congress would set itself to the task of devising means and creating administrative machinery for the purpose of preserving the business of one knave from the unfair competition of another. In the present case, however, we do not find it necessary further to consider the merits of this view or to determine whether the facts are such as to bring the case within it.

We think the quoted dictum to be contrary to both the language and the purpose of the statute. The court below

Furthermore, there is no support in the evidence for the apparent assumption made by the court below that the trade in antiobesity remedies is disreputable or that respondent's competitors engaged in comparable misrepresentation of their products. A reviewing court is certainly not warranted in assuming, by way of judicial notice, that during the period covered by this proceeding antiobesity remedies were generally sold by means of misrepresentation. If judicial notice warrants any factual assumption, it is that misrepresentation was not then rife in the trade. As the Government stated (p. 13) in its petition for certiorari in this case, there are now outstanding 29 orders issued by the Commission under the Federal Trade Commission Act, as well as 50 stipulations to which it is a party, prohibiting misrepresentation in the sale of products advertised as remedies, devices, or means for reducing weight. It certainly cannot be assumed that these orders and stipulations were being disregarded or that the entire industry was engaged in making false representations.

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itself seems to have rejected a similar argument in *Ford Motor Co. v. Federal Trade Commission*, 120 F. (2d) 175, 181-182; certiorari denied, October 20, 1941, No. 580, this Term.

***B. A Showing of Injury to Competitors Is Not Essential to the Validity of an Order Under Section 5 of the Federal Trade Commission Act***

We have heretofore reviewed the evidence upon the assumption that, under the views expressed in the *Raladam* case, there must be evidence which shows or warrants the inference that the unfair methods which the respondent used in competing with others were injurious to its competitors. We submit, however, that such a showing is not essential to the validity of an order under Section 5 of the Federal Trade Commission Act.

Section 5 declares unlawful "unfair methods of competition in [interstate] commerce". It directs the Commission if it believes that a person is using "an unfair method of competition in commerce", to issue a complaint and, if it concludes, after hearing, that the "method of competition in question" is prohibited by the act, to issue an order to cease and desist from "such method of competition".

By its terms, therefore, the statute requires a showing of only two things, competition in interstate commerce and use of unfair methods in such competition.<sup>21</sup> To hold that a showing of injury or probable injury to competitors is also requisite to the validity of an order of the Commission thereunder is to read an additional requirement into

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<sup>21</sup> The statute also provides that the Commission, before issuing a complaint, must conclude that a proceeding by it would be "to the interest of the public," but this requirement is not relevant to the question now under consideration.

the statute by implication. Such an interpretation might be warranted if it could reasonably be said to be necessary to effectuate the purposes of the act. We submit, however, that the interpretation in question tends to defeat rather than to effectuate the purposes of the legislation.

While the statute prohibits unfair methods of "competition" and thus deals with unfair trade practices from the standpoint of their impact upon competitors, it does not follow that its prohibitions apply only in the event of immediate and demonstrable injury to competitors. The object of the statute is to stop unfair methods of competition "in their incipency". (*Raladam* case, at p. 647; *Fashion Originators' Guild v. Federal Trade Commission*, 312 U. S. 457, 466), but not all types of unfair methods of competition produce or even tend to produce immediate injury to competitors. Accordingly, the objectives of the statute cannot be fully accomplished unless its prohibitions come immediately into play, as the words of the statute indicate, whenever unfair methods are used in competition in commerce, even though injury to competitors may not yet have occurred.

To agree to sell at uniform prices and thus to restrain price competition is an unfair method of competition prohibited by Section 5 (*Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52), but such conduct is not likely to be immediately injurious to competitors since it

gives them the opportunity either to obtain higher prices for their goods, by selling at the prices maintained by the combination, or to increase their share of the total trade, by selling below the prices which the combination maintains. Likewise if a manufacturer, by means of an elaborate policing system, induces distributors of its products to maintain specified resale prices, this is an unfair method of competition prohibited by Section 5 (*Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441), but such conduct is not likely to be immediately injurious to manufacturers of competing products. Distributors of the products of competitors, not being subjected to a restraint on resale prices, should be able to capture a larger share of the market by selling below the resale prices specified by the first manufacturer, and the competitors obviously benefit from any increase in the sales of their distributors.

Thus neither the words of the statute nor the attainment of its purposes require, in addition to a showing of the existence of competition, proof or finding of injury to competitors. The decisions of this Court prior to the *Raladam* case indicate that such was the interpretation which it placed upon the law. In *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, the Commission found that the respondent had misrepresented the character of its product and that it sold the product in competition with products which were not misrepresented, but there was no finding that competi-



tors were injured by the respondent's practice (*supra*, p. 17). When this Court, in sustaining the Commission's order, said that the respondent's practice was "necessarily" injurious to competitors, it in effect held that upon facts such as were there established, neither proof nor finding of injury to competitors is required. *Federal Trade Commission v. Pacific States Paper Trade Assn.*, 273 U. S. 52, sustained the validity of the two paragraphs of the Commission's order which were brought before this Court for review although there was neither proof nor finding that the practices prohibited by these paragraphs were injurious to competitors.<sup>22</sup> In *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441, there were findings of injury to competitors but they were apparently not regarded as material to the question of the validity of the Commission's order since the opinion of this Court, although stating at length

<sup>22</sup> The Commission's order was in eight paragraphs, each a separate and independent prohibition. Only paragraphs (b) and (c), prohibiting sales on the basis of agreed price lists and other like price-fixing activity, were brought before this Court for review. The Commission found that certain boycotting combinations prohibited by paragraphs (f)-(h) of the order were injurious to competitors (Fngs. 28, 29), but it made no finding that competitors were injured by the practices prohibited in the other paragraphs of the order. Record in *Pacific States Paper* case, pp. 180-215.)

The evidence before the Commission was no broader than its findings. The facts were stipulated and the Commission's findings substantially followed the stipulated facts, adding certain inferences drawn therefrom (273 U. S. 52; 58, 60).

(pp. 446-451) the facts found by the Commission, does not mention the facts found respecting injury to competitors.

This Court's opinion in the first *Raladam* case in 1931 contains the first indication that probable injury to competitors must be shown. The views expressed in that connection may be regarded as unnecessary, inasmuch as the ruling that the evidence was insufficient to show "the existence of competition" in itself necessitated setting aside the Commission's order.

Section 5 of the Federal Trade Commission Act was amended in 1938 primarily for the purpose of changing the situation caused by the *Raladam* decision.<sup>23</sup> The view was widely entertained in Congress that the amendment, which authorized the Commission to prohibit unfair trade practices without proof of competition or injury to competitors, would restore the meaning of Section 5 intended by Congress when it originally enacted the Federal Trade Commission Act.<sup>24</sup>

<sup>23</sup> The Wheeler-Lea Act of March 21, 1938, 52 Stat. 111, adding the phrase "unfair or deceptive acts or practices." See S. Rep. 221, pp. 2, 5, 75th Cong., 1st Sess.; H. Rep. 1613, p. 3, 75th Cong., 1st Sess.; S. Rep. 1705, pp. 2, 5, 74th Cong., 2d Sess.

<sup>24</sup> Statements by Senator Wheeler, in charge of the bill in the Senate, on S. 3744, 74th Cong. (80 Cong. Rec. 6436, 6590); statements by two members of the House Committee on Interstate and Foreign Commerce on S. 1077, 75th Cong. (83 Cong. Rec. 395, 397). S. 1077, 75th Cong., which became the Act of March 21, 1938, was identical with S. 3744, 74th

## II

THE PROCEEDINGS IN *FEDERAL TRADE COMMISSION V. RALADAM CO.*, 283 U. S. 643, ARE NOT A BAR TO THE PRESENT PROCEEDING.

Respondent argues (1) that the decision in the first *Raladam* case is *res judicata* in the present proceeding, and (2) that the orders of this Court and the Circuit Court of Appeals in the former case denying the Commission's application for leave to adduce additional evidence precluded the Commission from bringing the present proceeding. The Circuit Court of Appeals rejected the first of these contentions (R. 782) and disregarded the second. Both are plainly unsound.

A. *The Judgment Entered in the First "Raladam" Case is Not Res Judicata of the Issues, or of Any Issue, in the Present Case*

The general rules governing *res judicata* and estoppel by judgment are clearly settled. A judgment upon the merits is an absolute bar to a subsequent proceeding upon the same claim or demand,

Cong., which passed the Senate but died in the House Committee.

The Committee reports on the original 1914 Act throw no light upon this specific question, and the debates in Congress manifest no definite legislative opinion with respect to it. The summary of the legislative debates in the first *Raladam* opinion (283 U. S., at 648-650) refers only to statements as to the general objectives of the law which, we submit, are entirely consistent with the construction of the statute suggested here.

but in suits upon different claims or demands there is estoppel by judgment only if a question upon which recovery in the second action depends is "the same as" a question litigated and determined in the original proceeding. *Tait v. Western Maryland Ry. Co.*, 289 U. S. 620, 623; *Southern Pacific R. R. Co. v. United States*, 168 U. S. 1, 50; *Cromwell v. County of Sac*, 94 U. S. 351, 353. And in suits upon different demands, the inquiry is whether a question in issue in the second proceeding has "under identical circumstances and conditions" been previously concluded by a judgment between the parties. *New Orleans v. Citizens' Bank*, 167 U. S. 371, 396.

The claim in the instant case is not the same as that made in *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, and the judgment entered therein is therefore not an absolute bar here. In the present proceeding the claim is that respondent has, since April 17, 1929, been engaging in unfair methods of competition (R. 34, 38-39, 46). In the earlier case the claim was that, prior to April 13, 1929, the date of the Commission's order, respondent had been engaging in unfair methods of competition.<sup>25</sup> Obviously, a claim of unlawful conduct in one period of time is not the same as the claim of unlawful conduct in another period of time. A prior judgment, although upon the same subject matter, is not conclusive as between the parties of

<sup>25</sup> Record in first *Raladam* case, p. 26.

rights accruing subsequent to rendition of the judgment.<sup>26</sup>

The claims in the two cases are not one and the same for the further reason that they are based upon substantially different misrepresentations. In the prior case the misrepresentations charged and found were that respondent's preparation, Marmola, is based upon "scientific research," is a "scientific" method for treating obesity, and may be used without danger of harmful physical consequences.<sup>27</sup> In the present case, on the other hand, the principal misrepresentations charged and found are that thyroid deficiency is the usual cause of excess weight, that administration of thyroid is the customary and accepted medical treatment for obesity, that Marmola is an efficacious remedy for this condition, and that respondent's advertising discloses all the material facts concerning Marmola's properties and effects (*supra*, pp. 6-7).

Not only is the prior judgment not an absolute bar to the present proceeding but it did not determine any question upon which recovery herein depends. What was determined in the previous case was that the evidence then before the Commission was insufficient to support a finding that

<sup>26</sup> *Auto Acetylene Light Co. v. Preat-O-Lite Co.*, 264 Fed. 810, 815 (C. C. A. 6); Freeman, *Judgments* (5th ed., 1925), vol. 2, secs. 605, 606, 619-620, 622; Black, *Judgments* (2d ed., 1902), secs. 741-742, 747-748.

<sup>27</sup> Record in first *Raladam* case, pp. 3-4, 23-24. See 283 U. S. at 645; 42 F. (2d), at 434.

there were competitors of respondent or a finding that competitors were injuriously affected by respondent's false and misleading representations concerning Marmola. The question here in issue is whether the evidence *introduced in the instant case* warrants such findings. Since that evidence is not the same as, or even substantially similar to, the evidence in the earlier case,<sup>28</sup> the questions here in issue are not the same as those previously adjudicated.

Moreover, if it be assumed *arguendo* that the prior judgment conclusively determines as between the parties, not merely the question of the sufficiency of the particular evidence introduced in the prior proceeding, but that prior to April 13, 1929,

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<sup>28</sup> In the prior case the evidence relating to competition consisted of (1) testimony by an officer of the American Medical Association that he had been able to purchase six alleged antiobesity remedies in Chicago drug stores and (2) a list of alleged antiobesity remedies compiled by the same witness from a file of the American Medical Association (Record in first *Raladam* case, pp. 111-112, 130-131). The file was based upon letters or advertisements received by the Association and the witness had no knowledge, except in the case of three concerns, that the companies making the listed remedies were still in business. (*ib.*, pp. 131-132, 159-169).

In contrast with this showing, the evidence here shows that numerous products advertised to the general public as anti-obesity remedies were marketed through the same wholesale and retail channels as Marmola, that various pharmaceutical products containing thyroid (ordinarily bought on a doctor's prescription) are marketed through the same trade channels as Marmola, and that books of instruction on weight reduction are widely sold in interstate commerce (*supra*, pp. 7-9).



there were, in fact, no competitors of respondent, or none injured by its misrepresentations, such determination is not conclusive upon the question of competition or the question of injury to competitors subsequent to that date. Since determination of the latter questions is governed by the facts existing during the later period and since there was no proof that the facts remained the same during the two periods, the questions which are here in issue are not the same as those previously adjudicated and they certainly are not presented "under identical circumstances and conditions". It follows that the prior judgment does not conclude the parties on either the question of competition or the question of injury to competitors.

Where the question in issue, in suits covering different periods of time, is dependent upon the facts existing in the two respective periods, judgment entered in one suit is not conclusive in a second suit between the parties even though the proof shows that the relevant facts in the two periods are "substantially the same". *Engineer's Club of Phila. v. United States*, 42 F. Supp. 182 (Ct. Cls.).<sup>29</sup> As that court observed (pp. 187-

<sup>29</sup> Accord, *Snyder v. Commissioner*, 73 F. (2d) 5, 6 (C. C. A. 3), affirmed in an appeal not raising the *res judicata* point, 295 U. S. 134. See also *International Salt Co. v. Phillips*, 3 F. (2d) 678, 682 (M. D. Pa.), reversed on other grounds 4 F. (2d) 389, which was in turn reversed 23 U. S. 718; *Duquesne Club v. Bell*, 42 F. Supp. 123, 126 (W. D. Pa.).

188), where liability depends upon the whole nexus of pertinent facts during the period of suit and such facts may "easily vary from period to period enough to change the judgment of the same tribunal", determination of the legal effect of one set of facts is not an adjudication as to the legal effect of substantially similar but nevertheless different facts for another period. The doctrine of *res judicata* does not apply under these circumstances.<sup>30</sup>

*Tait v. Western Maryland Ry. Co.*, 289 U. S. 620, upon which respondent relies, has no application to the present case because there the question in issue in the two cases was dependent upon the same historical events, whereas here the questions in issue in the two cases are dependent upon the varying and variable facts currently existing in two separate periods of time. In the *Tait* case there had been a prior adjudication that the railroad, in computing its federal income taxes, was entitled to amortize a proportionate amount of the discount at which

<sup>30</sup> The doctrine of *res judicata* should not be applied where a question arising in suits on different claims concerns the legal effect of similar but different transactions, because extension of the doctrine to this situation "leads only to continued litigation as to its application" and therefore defeats the very purpose of the doctrine. Griswold, *Res Judicata in Federal Tax Cases* (1937), 46 Yale L. J. 1320, 1335, 1357. Since the doctrine of *res judicata* forecloses inquiry into the truth, it is justified only to the extent that it brings some compensating advantage, that is, when its practical effect is to bring relief from "redundant litigation" and to operate "as a principle of peace" (*id.*, p. 1355).

two predecessor corporations had issued their bonds. When the same question arose in a suit between the parties involving federal income taxes for later years, all of the facts before the court in the second case had been before the court in the first and the applicable law remained the same; accordingly, the matter was held to be *res judicata*. As this Court said (p. 626): "The very right now contested arising out of the same facts appearing in this record, was adjudged in the prior proceeding."

In suits upon different claims a prior judgment is not always conclusive as between the parties even where the question in issue is dependent upon the same historical events. *Blair v. Commissioner of Internal Revenue*, 300 U. S. 5. In that case the same question as to the legal effect of certain prior written documents had been earlier adjudicated in a suit between the parties but later a State court had authoritatively determined the question in a suit involving other parties. Because of the "new situation" created by this intervening decision, the question presented in the second suit was said to be not "essentially the same" as that presented in the first and the prior judgment was therefore held to be not *res judicata* of the issue.

*B. Denial of the Applications for Leave to Adduce Additional Evidence in the First Case in No Way Affects the Present Proceeding*

Section 5 of the Federal Trade Commission Act provides that if a person against whom the Commis-

sion has entered an order under that section applies to a Circuit Court of Appeals for review of the order, the court may, upon application of either party, grant leave to adduce "additional evidence".

After this Court held in the first *Raladam* case that the Commission's order must be set aside for lack of evidence on an essential point, the Commission moved in this Court that the judgment be modified so as to include a direction to the Circuit Court of Appeals that the decree of reversal be without prejudice to the taking of additional evidence by the Commission with respect to competitors and injury to competitors. On October 12, 1931, this motion was denied without prejudice to an application to the Circuit Court of Appeals for similar relief. Such a motion was subsequently made in and denied by the Circuit Court of Appeals.<sup>31</sup> Respondent contends that the evidence introduced in this case constitutes "additional evidence" in the proceeding which was before this Court in *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, without leave having been obtained from the court to adduce such evidence, as required by Section 5, and that accordingly, the Commission has proceeded in violation of the statute.<sup>32</sup>

The answer to this contention is that it rests upon the mistaken premise that the instant case is a continuation of the proceeding which was ruled

<sup>31</sup> See Respondent's Exhibits 7 and 9, Original.

<sup>32</sup> The court below made no reference to this contention.

upon in 283 U. S. 643. We have already pointed out that the present case is a wholly independent proceeding, initiated by the filing of a new complaint four years after the close of the prior case, covering a different period of time, and charging materially different misrepresentations (*supra*, pp. 45, 31).

#### CONCLUSION

It is respectfully submitted that the judgment of the court below should be reversed, with directions to affirm the order of the Federal Trade Commission.

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*Solicitor General.*

THURMAN ARNOLD,

*Assistant Attorney General.*

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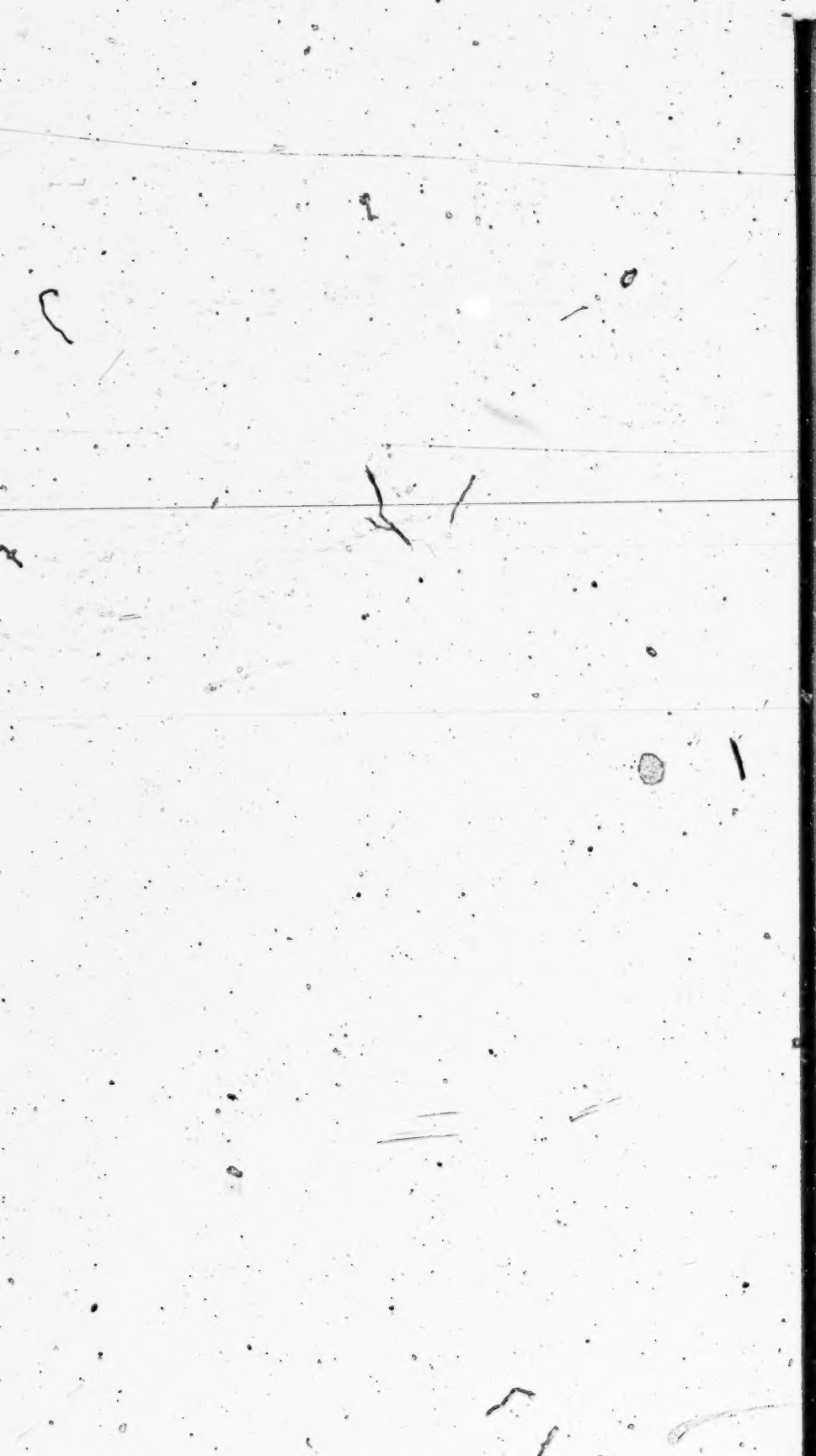
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MARCH 1942.





JAN 28 1942

IN THE  
Supreme Court of the United States

OCTOBER TERM, 1941

No. 826

FEDERAL TRADE COMMISSION,  
*Petitioner,*

v.

RALADAM COMPANY,  
*Respondent.*

BRIEF IN BEHALF OF RALADAM COMPANY,  
RESPONDENT, IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI

ROCKWELL T. GUST,  
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Respondent.*



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FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Raladam Company, respondent herein, or its predecessors, have been engaged since 1909 or 1910 (R. 81) in selling to the retail and wholesale drug trade (R. 91) a pharmaceutical preparation called Marmola Prescription Tablets (R. 80). Marmola is manufactured for Raladam by Parke Davis & Company (R. 82-4), and is recommended for the treatment of obesity (R. 96-7).

The Federal Trade Commission, petitioner herein, first instituted proceedings against Raladam on February 29, 1928, alleging in its complaint that certain statements contained in the Marmola advertising, on the Marmola package, and in the circular enclosed therewith, to the effect that Marmola was a safe and scientific remedy for the treatment of obesity, were untrue and had "the tendency and capacity to mislead and deceive the purchasing public," with the result that such statements were "to the prejudice of the public and of competitors of respondent Raladam Company, and constitute unfair methods of competition in commerce within the intent and meaning of Sec. 5 of the Federal Trade Commission Act (Raladam's Ex. 1);"

Raladam joined issue on these allegations, and the Commission, after a lengthy hearing, found them to be correct and ordered Raladam to cease and desist from making such statements concerning Marmola (Raladam's Ex. 1). Raladam appealed this order to the Circuit Court of Appeals for the Sixth Circuit (Raladam's Ex. 2), which entered a decree setting the same aside (Raladam's Ex. 3) on the ground that the Commission had no evidence before it that would support a finding (1) that Raladam's statements concerning the safety and scientific nature of Marmola as a treatment for obesity were false and misleading, or (2) that, even if false and misleading, they constituted "unfair methods of competition" within the purview of the statute.<sup>1</sup>

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\*The record and proceedings in the case referred to were offered and received in evidence in the instant case as Raladam's Exhibits 1-10 (R. 74-5 and 424-8), and, although not incorporated in the printed record, are before this Court as physical exhibits pursuant to a stipulation between the parties hereto (R. 71).

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1—*Raladam Company v. Federal Trade Commission*, 42 F. (2d) 439.

The decree of the Circuit Court of Appeals for the Sixth Circuit was affirmed by this Court (*Raladam's Ex. 10*) in an appeal expressly limited to the question of the jurisdiction of the Commission (282 U. S. 829). In so doing, this Court held that the Commission lacked jurisdiction to proceed in a given case unless it had evidence before it that would support a finding of "unfair methods of competition" within the purview of the statute, which in turn required that "there be present or potential *substantial* competition, which is shown by proof, or appears by *necessary* inference, to have been injured or to be *clearly* threatened with injury, to a *substantial* extent, by the use of the unfair methods complained of." This Court then examined the record and found that the evidence before the Commission was insufficient to sustain such a finding, according to this test.<sup>2</sup>

The Commission thereupon petitioned, first, this Court, and then the Circuit Court of Appeals for the Sixth Circuit, under the procedure provided in Section 5 of the Federal Trade Commission Act,<sup>3</sup> for leave to adduce "additional evidence as to the competitors of petitioner herein, *Raladam Company*, and as to the injury to such com-

<sup>2</sup>—*Federal Trade Commission v. Raladam Company*, 283 U. S. 643, 651, 652-54.

<sup>3</sup>—Sec. 5 of the *Federal Trade Commission Act* (Sec. 45, Title 15, U. S. C.) provides, in part, as follows:

" \* \* \* If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. \* \* \* "

petitors resulting from Raladam Company's unfair-trade practices," but both of these petitions were denied (Raladam's Exs. 7 and 9).

Having failed to obtain permission to take such additional evidence of the alleged existence of competition and injury thereto, as aforesaid, the Commission commenced these new proceedings for that purpose, involving the same statute (Federal Trade Commission Act, as originally enacted), the same parties (Federal Trade Commission and Raladam Company), and the same subject matter (statements by Raladam that Marmola is a safe and scientific treatment for obesity). While perhaps worded and arranged a little differently, the Commission's amended complaint in the instant case (R. 44-54) contains substantially the same allegations as did its complaint in the previous case; and its finding (R. 15-39) and order to cease and desist based thereon (R. 40-44) in the instant case, though amplified in verbiage and somewhat changed in form, are, in substance, the same as its findings and order to cease and desist in the previous case.

In view of the foregoing, Raladam again petitioned the Circuit Court of Appeals for the Sixth Circuit to set aside the order of the Commission in the instant case (R. 145), on the following grounds:

- (1) The previous case is *res adjudicata* of the issues now sought to be litigated by the Commission in the instant case.
- (2) The Commission lacks the power to avoid the ruling of this Court and the Circuit Court of Appeals for the Sixth Circuit in the previous case, denying it

the right to adduce additional evidence as to competition and injury thereto, by instituting these new and independent proceedings for such purpose.

- (3) The same considerations which compelled the setting aside of the Commission's order in the previous case should compel a like result in the instant case, not only under the principle of *stare decisis* but even though it were before the Court for the first time.

On October 7, 1941, the Circuit Court of Appeals for the Sixth Circuit, selecting as a basis for its action the third ground urged upon it by Raladam, as aforesaid, again set aside the order to cease and desist, issued by the Commission against Raladam, because "There was no substantial evidence supporting the formula of the Supreme Court that these advertisements substantially injured or tended to injure the business of any competitor \* \* \* " (R. 784). It is to review this decision that the Commission has applied to this Court for a writ of certiorari.

## ARGUMENT

- A. Since the reviewing court must ultimately determine the question of what constitutes "unfair methods of competition in commerce," within the purview of the statute, in a given case, it is not limited, in reviewing findings of the Commission in this regard, as in reviewing mere findings of fact.**

This Court has repeatedly held, in a long line of decisions, commencing with *Federal Trade Commission v. Gratz*, 253 U. S. 421, and including the previous case of *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, that the question of what constitutes "unfair methods of competition in commerce" within the purview of the statute in a given case is one for ultimate determination by the courts rather than by the Commission. In the *Gratz* case, *supra*, this Court said on page 427 of its opinion:

"The words 'unfair methods of competition' are not defined by the statute and their exact meaning is in dispute. *It is for the courts, not the commission, ultimately to determine as matter of law what they include.* \* \* \* (Italics ours) .

In *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441, 453, in affirming the decision in the *Gratz* case, and elaborating on the reasons therefor, this Court held:

" \* \* \* Congress deemed it better to leave the subject ['unfair methods of competition'] without precise definition, and to have each case determined upon its own facts, owing to the multifarious means by which it is sought to effectuate such schemes. The Commission, in the first instance, subject to the



*judicial review provided*, has the determination of practices which come within the scope of the act. (See Report No. 597, Senate Committee on Interstate Commerce, June 13, 1914, 63rd Cong., 2nd sess.)" (Italics ours)

• In the previous case of *Federal Trade Commission v. Radcliff Co.*, 283 U. S. 643, 648, this Court, following its earlier decisions, again held that:

" . . . Undoubtedly the substituted phrase ['unfair methods of competition'] has a broader meaning *but how much broader has not been determined*. It belongs to that class of phrases *which do not admit of precise definition*, but the meaning and application of which must be arrived at by what this court elsewhere has called 'the gradual process of judicial inclusion and exclusion.' *Davidson v. New Orleans*, 96 U. S. 97, 104. The question is one for the final determination of the courts and not of the Commission. *Federal Trade Comm. v. Gratz*, 253 U. S. 421, 427; *Federal Trade Comm. v. Beech-Nut Co.*, *supra*, p. 453." (Italics ours)

In *Standard Oil Co. v. Federal Trade Commission* (C.C.A., 2nd Cir.), 273 F. 478, 481, which was affirmed by this Court in *Federal Trade Commission v. Sinclair Refining Co.*, 261 U. S. 463, 465, it was held:

" . . . And this rule [that 'The question is one for final determination by the courts.'] is not avoided by [the Commission] stating as a finding of fact what is a mere conclusion of law. . . ."

Under the foregoing decisions, it is apparent that the question of what constitutes "unfair methods of competition," within the purview of the statute, in a given case, is one for ultimate determination by the courts rather than by the Commission. This is so, because "Congress deemed

it better to leave the subject without precise definition, and to have each case determined on its own facts," with the result that "The Commission [merely], in the first instance, subject to judicial review, has the determination of practices which come within the scope of the act" (*Fed. Trade Comm. v. Beech-Nut Packing Co.*, discussed *supra* pp. 6-7).

Hence, a court, in reviewing the finding of the Commission on this question, in a given case, has the right and, in fact, the duty to examine the record fully for the purpose of determining whether the evidence before the Commission is sufficient to sustain such finding, just as this Court did in each of the cases hereinabove discussed, including the previous case of *Federal Trade Commission v. Raladam Company*, *supra*, page 7; "And this rule is not avoided by [the Commission] stating as a matter of fact what is a mere conclusion of law" (*Standard Oil Co. v. Fed. Trade Comm.*, discussed, *supra*, p. 7). Obviously, then, the function of the reviewing court, where such a finding of the Commission is challenged, is not merely perfunctory, the contentions of the Commission in the case at bar to the contrary notwithstanding.

The cases of *Federal Trade Commission v. Pacific States Paper Trade Association*, 273 U. S. 52, 62, and *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73, cited by the Commission on page 14 of its brief, do not in any way impinge upon the principles laid down by this Court in the decisions hereinabove discussed. Those cases merely applied, under proper circumstances, the express provision of the statute (Sec. 45, Title 15, U. S. C.) that "The findings of the Commission as to facts, if supported by the testimony, shall be

conclusive," and, therefore, held that where the Commission has evidence before it to support its inferences and findings, *as to matters of fact*, the reviewing court cannot make any independent appraisal of such evidence for the purpose of drawing different inferences or making different findings in regard thereto.

This of course presupposes the existence of evidence in the record to support such inferences and findings. Hence it is clear, in addition, despite the confusion in which the Commission seems to frequently find itself regarding the matter, that its prerogative to make findings and draw inferences that are conclusive, providing there is evidence in the record, conflicting or otherwise, to support the same, does not include, and hence does not deprive the reviewing court of, the right to determine whether there is, in fact, any such evidence in the record. Possibly it is the apparent zeal of the Commission to have its complaints ripen into orders to cease and desist, which will not be overturned on appeal, that causes it to so often lose sight of this principle, and to resent its inability to, thus, "lift itself by its own bootstraps," as it were; but whatever the cause of the Commission's disability in this regard, there can be no doubt concerning the verity of the principle.

In this connection it should also be noted that the inferences and findings of the Commission are not conclusive on the reviewing court, unless there is evidence in the record to support them, which is *substantial*. As this Court said in the recent case of *National Labor Relations Board v. Columbian Enameling & Stamping Co.*, 306 U. S. 292, 299-300, in speaking of the conclusiveness of findings of a similar administrative tribunal:

"Section 10 (e) of the Act provides: ' . . . The findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred (citing cases). Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. 'It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' *Consolidated Edison Co. v. National Labor Relations Board*, supra, p. 229 [305 U. S. 197], and it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury (citing cases)."

- B. The decision of the lower Court (1) was rendered in accordance with *Federal Trade Comm. v. Raladam Co.*, 283 U. S. 643, and (2) does not invade the province of the Commission to make findings of fact that are conclusive, if supported by substantial evidence.**

While the Commission devotes space in its brief to the discussion of such irrelevant matters as its finding that "respondent's representations are likely to result in injury to the health of purchasers of its product," in what is apparently an attempt to confuse the issues and bias the Court against the respondent, the only grounds of its petition which need any discussion are, *first*, its contention that "the decision below is in conflict with *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643" (Commission's Brief, p. 9); and, *second*, its contention that "the decision below constitutes, in substance if not in form, a

serious breach of the statutory provision that the findings of the Commission, 'if supported by testimony,' shall be 'conclusive' (Commission's Brief, p. 14).

- (1) **The decision of the lower Court was rendered in accordance with *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643.**

This Court, in the previous case of *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, after holding on page 648 of its opinion that the question of what constitutes "unfair methods of competition in commerce," within the purview of the statute, in a given case, "is one for the final determination of the courts and not of the Commission," as hereinabove noted, *supra* page 7, went on to point out, on page 651 of its opinion, that:

"While it is impossible from the terms of the act itself, and in the light of the foregoing circumstances leading up to its passage, reasonably to conclude that Congress intended to vest the Commission with the general power to prevent all sorts of unfair trade practices in commerce apart from their actual or potential effect upon the trade of competitors, it is not necessary that the facts point to any particular trader or traders. It is enough that there be present or potential *substantial* competition, which is shown by proof, or appears by *necessary* inference, to have been injured, or to be *clearly* threatened with injury, to a *substantial* extent by the use of the unfair methods complained of." (Italics ours).

This Court then proceeded to carefully analyze the evidence, which the Commission had before it on the hearing, and to conclude it was insufficient to support a finding essential to a Commission's jurisdiction that Raladam

Company was engaged "in unfair methods of competition" within the purview of the statute, due to the failure of such evidence to meet the test laid down on page 651 of its opinion, as aforesaid. The pertinent part of the Court's opinion in this connection is found on pages 652-53, and reads as follows:

"Findings of the Commission justify the conclusion that the advertisements naturally would tend to increase the business of respondent; but there is neither finding nor evidence from which the conclusion legitimately can be drawn that these advertisements substantially injured or tended thus to injure the business of any competitor or of competitors generally, whether legitimate or not. . . . It is impossible to say whether, as a result of respondent's advertisements, any business was diverted, or was likely to be diverted, from others engaged in like trade, or whether competitors, identified or unidentified, were injured in their business, or were likely to be injured, or, indeed, whether any other anti-obesity remedies were sold or offered for sale in competition, or were of such a character as naturally to come into any real competition with respondent's preparation in the interstate market. All this was left without proof and remains, at best, a matter of conjecture. *Something more substantial than that is required as a basis for the exercise of the authority of the Commission.*" (Italics ours)

The lower Court in the instant case, after carefully reviewing the opinion of this Court in the previous case to find the true basis thereof, and then reviewing and discussing the evidence before the Commission, as this Court had done in the previous case, came to the unavoidable conclusion that such evidence was insufficient, under the test laid down in this Court's opinion, to support the Commission's jurisdictional finding that the respondent



was engaged in "unfair methods of competition," within the purview of the Act. In this connection, the lower Court said (123 F. (2d) 34, 37-8) (R. 784-85):

" \* \* \* There was *no substantial evidence* supporting the formula of the Supreme Court 'that these advertisements substantially injured or tended to injure the business of any competitor' \* \* \*"

" \* \* \* We find *no evidence* in the record upon which a *substantial inference* can be based that this was so. We cannot approve the finding of the Commission upon pure speculation \* \* \*." (Italics ours)

Upon examining the Record, the lower Court found that the evidence, upon which the Commission had based its findings that Raladam Company was engaged in "unfair methods of competition, within the intent and meaning of Section 5" of the statute was of essentially the same kind and calibre, and therefore subject to the same deficiencies found by this Court in the evidence before the Commission in the previous case.

In other words, as in the previous case, the Commission has again failed to adduce evidence from which it is possible "to say whether, as a result of respondent's advertisements, any business was diverted, or was likely to be diverted, from others engaged in like trade, or whether competitors, identified or unidentified, were injured in their business, or were likely to be injured, etc." (Page 653 of this Court's opinion in the previous case, discussed, *supra*, p. 12).

Therefore, to epitomize the decision of the lower Court, it was bound to conclude, as it did conclude, that "There was no substantial evidence supporting the formula of the Supreme Court 'that these advertisements substan-

tially injured or tended to injure the business of any competitor \* \* \*,” with the necessary result that the Commission’s jurisdictional finding that the respondent herein is engaged in “unfair methods of competition in commerce, within the intent and meaning of Section 5” of the Act, is again lacking in evidence to support it.

Finally, the contention of the Commission that the lower Court based its entire decision *solely* on the fact that there was no direct proof of injury to competitors of Raladam Company, like its contention that said decision is in conflict with *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, are clearly unsound and may be dismissed with brief comment. With regard to the former contention, it is sufficient to point out that the lower Court merely considered such absence of direct proof of injury to competitors to be one of the deficiencies in the evidence before the Commission, precisely as this Court had done on page 653 of its opinion in the previous case, and as the Commission concedes is perfectly proper in the second paragraph on page 10 of its brief herein.

Hence, this contention of the Commission, together with its contention based thereon, and which must therefore fall therewith, that such a decision would place the lower Court in conflict with “decisions of four other circuit courts of appeals on the same matter,” even though such a conflict with decisions based on different facts and circumstances were possible, may be characterized as a patent attempt by the Commission to import a non-existent error into the lower Court’s decision, in the forlorn hope of manufacturing some possible basis for the issuance of a writ of certiorari in the instant case.

With regard to the Commission's contention that the *Winsted Hosiery* case requires a different decision than the one arrived at by the lower Court herein, it should be noted this same contention was urged upon this Court by the Commission in the previous case, and was disposed of unfavorably to the Commission on pages 651-52 of the opinion therein. Thus, it is submitted that the Commission's pertinacity in this regard, like that displayed in its perennial pursuit of the respondent herein, is worthy of a better cause.

**(2) The lower Court's decision does not invade the province of the Commission to make findings of fact that are conclusive, if supported by substantial evidence.**

No extended consideration of this point should be necessary, in view of the discussion and analysis of the lower Court's opinion in the preceding section of this brief, *supra*, pages 10-15, and the consideration given, *supra*, pages 6-10, to the proper function of a reviewing court, where the Commission's findings concerning what constitutes "unfair methods of competition," within the purview of the statute, in a given case, is challenged.

We have already seen in this connection that, in all cases, "The question is one for final determination of the courts and not of the Commission" (*Fed. Trade Comm. v. Raladam Co.*, and other cases discussed, *supra*, pp. 6-8); and that, in the instant case, the lower Court, after analyzing the evidence in the Record, just as this Court had done in the previous case, based its decision squarely upon the fact that "There was no substantial evidence [before the Commission] supporting the for-

mula of the Supreme Court "that these advertisements substantially injured or tended to injure the business of any competitor \* \* \*" (R. 784). Hence, nothing more should be necessary to demonstrate that the Commission's contention that "the decision below" invades the province of the Commission to make conclusive findings of fact, if supported by substantial evidence is utterly unfounded.

Again, we submit that the Commission has apparently again, as in the past, confused its prerogative to make conclusive findings of fact, if supported by substantial evidence, with the prerogative of the reviewing court to ultimately determine (1) whether there is, in fact, any substantial evidence to support the findings of the Commission, on matters of fact, and (2) what legal results follow from the facts properly found.

**C. The petition for a writ of certiorari should be denied because the decision of the lower Court is correct on other grounds urged upon it by respondent, but not relied on in such decision.**

The familiar doctrine, recognized by this Court at an early date in *Collier v. Stanbrough*, 6 How. 14, 21, that the decision of a lower Court will be affirmed on appeal if it is correct on any ground appearing in the record, even though it be some other ground than that relied upon in such decision, furnishes still another reason for denying the petition of the Commission for a writ of certiorari. In urging the lower Court to set aside the order to cease and desist issued by the Commission herein, respondent contended, in addition to its argument on the merits of the case, *first*, that the decision of that Court in the previous case (reported in 42 Fed. (2d)

430) as affirmed by this Court in *Federal Trade Commission v. Raladam*, 283 U. S. 643, is *res adjudicata* of the issues which the Commission is seeking to litigate in the instant case; and, *second*, that the Commission lacks the power to avoid the ruling of this Court and the lower Court in the previous case, denying its petition to take further evidence on the existence of and injury to alleged competitors of the respondent, by instituting these new and independent proceedings for such purpose.

The lower Court, in rendering its decision herein, overruled the first of these contentions (R. 781) and disregarded the second. Nevertheless, it is submitted that these contentions of respondent are well taken and afford additional grounds of support for such decision, as will be briefly hereinafter pointed out, with the result that the petition of the Commission for a writ of certiorari should be denied.

- (1) The decision of the lower Court in the previous case, as affirmed by this Court, is *res adjudicata* of the issues which the Commission is seeking to litigate in the instant case.**

The issues, *first*, of whether Marmola was a safe and scientific treatment for the self-medication of obesity, and, *second*, whether the statements in the Marmola advertising, on the package, and in the circular enclosed therewith, regarding its safety and scientific nature, were prejudicial to the alleged competitors of Raladam and constituted unfair methods of competition in commerce within the purview of the Federal Trade Commission Act, were before the lower Court in the previous case. The findings of the Commission on these issues, and the record before the Commission on

which the findings purported to be based, were examined and were squarely passed upon, in the previous case, unfavorably to the Commission; and the decision of the lower Court in this regard was subsequently affirmed by this Court in *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643. Under the principles laid down in the authorities hereinafter discussed, such decision in the previous case is *res adjudicata*, not only of the issues which were actually before it and passed upon therein, as aforesaid, but of everything, including any additional evidence, which the Commission might have brought forward and produced in support of its contentions in regard to those issues.

: An examination of the record in the instant case, with these principles in mind, clearly discloses that the issues raised are the identical issues passed upon by this Court in the previous case. The most that can be said in behalf of the Commission is that it has produced a somewhat larger quantity of testimony, of essentially the same character and quality as that which it produced in support of its contentions regarding those issues in the previous case. In this manner it has unsuccessfully endeavored to repair the deficiencies in the record in the previous case by committing the common error of believing quantity to be a substitute for quality.

It is submitted that any such endeavor is both perfectly characterized and completely disposed of by the following excerpt from page 65 of the opinion of the Supreme Court in *Southern Pacific Railroad v. United States*, 168 U. S. 1:

“ \* \* \* Whatever is new in the evidence now before us, touching that matter, is simply cumulative on the one side or the other. The application



to consider that evidence is practically an application for a rehearing as to things directly determined in the former suits between the same parties, and which adjudication has never been modified. Such a course of procedure is wholly inadmissible under the settled rule of res judicata. \* \* \*

The following cases are other decisions of this Court recognizing and applying the principles laid down in *Southern Pacific Railroad v. United States*, supra.

*Belton v. Morgan*, 7 Wall. 619, 621, 621-2, 622-3;  
*Cromwell v. County of Sac*, 94 U. S. 351, 352-3;  
*Werlein v. New Orleans*, 177 U. S. 390, 398,  
 399-400, 403;

*United States v. California and Oregon Land Co.*, 192 U. S. 355, 358, 359, 359-60;

*Grubb v. Public Utilities Commission*, 281 U. S. 470, 472, 472-3, 474, 475, 478, 478-9;

*Chicot County Drainage Dist. v. Baxter State Bank*, 308 U. S. 371, 375, 377-8.

For example: It cannot be denied that the parties are the same in the instant case as they were in the previous case; the subject matter is the same; and the statute under which these proceedings are brought is the same. The amended complaint in the instant case (R. 44-45) again alleges, in substance, as did the complaint in the previous case, that the statements contained in the Marmola advertising, on the package, and in the circular enclosed therewith, to the effect that Marmola is a safe and scientific remedy for self-medication in cases of

\* The statute has since been amended but such amendment was after the commencement of these proceedings and the issuance of the order of the Commission now under review, and, likewise, the labelling provisions of the Federal Food, Drug and Cosmetic Act of 1938 are not here involved.

obesity, are untrue, and have the tendency and capacity to mislead and induce the public "to purchase Marmola in preference to and to the exclusion of any and all identical or like or otherwise competitive products," all to the prejudice of the public and of respondent's [Raladam's] competitors and constitute unfair methods of competition within the intent and meaning of Section 5 of an Act of Congress, entitled, 'an Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914" (R. 54). Thus, it is apparent that while slightly different language has been used and allegations of the amended complaint in the instant case have been rearranged and somewhat amplified by the recitation of certain scenic but unessential particulars, they are, in substance, the same in every fundamental and essential detail as the allegations of the complaint in the previous case.

After the issuance of the amended complaint in the case at bar, Raladam filed its answer thereto (R. 55-70), in which it denied the material allegations therein contained. On issue thus joined the matter again came on for a lengthy hearing before the Commission.

An examination of the record discloses that, in essence, the evidence which the Commission produced in the instant case is of the same character and calibre as that in the previous case. It goes to the attempted proof of exactly the same fundamental issues. It proves nothing more than did the evidence in the previous case, and by the same token it proves just as little.

Furthermore, no excuse is offered and no showing made to justify the Commission's failure to produce the same evidence at the lengthy hearing in the previous

case. Every inference to be drawn from a reading of the record in this case results in the conclusion that either the same evidence or evidence of exactly the same kind was available and could readily have been produced in the previous case had the Commission seen fit or been at all diligent.

Nor do the inferences to be drawn from a reading of the record, as aforesaid, afford the only support for such a conclusion. At a matter of fact, its verity is further established by the motion (Raladam's Ex. 1) which the Commission made, first, to this Court and then to the lower Court, in the previous case (discussed, *supra* pp. 3-4), after its decree setting aside the Commission's order to cease and desist had been affirmed by this Court. In this motion the Commission requested the lower Court to modify its decree so "as to provide that such decree of reversal is without prejudice to further proceedings before the Commission in this cause (1) for the taking of *additional* evidence as to the competitors of petitioner herein, Raladam Company, and as to the injury to such competitors resulting from Raladam Company's unfair trade practices and (2) for making of further findings of fact and a further order based on such additional evidence."

First this Court, and then the lower Court, after receiving the briefs of the Commission and Raladam on the matter, entered orders denying the said motion (Raladam's Exs. 7 and 9); and it is submitted that these orders were, in effect, a direct adjudication of the question of the Commission's right to institute any further proceedings against Raladam, for the purpose of taking *additional* evidence on the question of the existence of and injury to alleged competitors of Raladam.

Thus, not only has the Commission had its day in court in the previous case on the very issues it is now seeking to re-litigate in the instant case, but, more conclusive still, it has had its day in court on the express question of whether it was entitled to conduct any further proceedings against Raladam for the purpose of taking additional evidence on such issues. In other words, this Court is presented with a double basis for applying the doctrine of *res adjudicata* in the instant case, although either basis is sufficient.

The only argument worthy of note advanced by the Commission in the lower Court as to why the foregoing contentions of respondent were incorrect was that these proceedings involved a different period of time. Respondent pointed out that this did not make any difference under the decision of this Court in *Tait v. Western Maryland Railway Co.*, 289 U. S. 620, 623, 624, wherein it was held:

"The petitioner seeks a reversal on the merits, asserting that a judgment in a suit concerning income tax for a given year cannot estop either of the parties in a later action touching liability for taxes of another year. \* \* \*

"As petitioner says, the scheme of the Revenue Acts is an imposition of tax for annual periods, and the exaction for one year is distinct from that for any other. But it does not follow that Congress in adopting this system meant to deprive the government and the taxpayer of relief from redundant litigation of the identical question of the statute's application to the taxpayer's status.

"This court has repeatedly applied the doctrine of *res adjudicata* in actions concerning state taxes, holding the parties concluded in a suit for one

year's tax as to the right or question adjudicated by a former judgment respecting the tax of an earlier year \* \* \*." (Italics ours)

The decision of this Court in *Chicago, Rock Island & Pacific Railway Co. v. Schendel*, 270 U. S. 611, 617, is also of interest in this connection. In that case this Court ruled:

"The Iowa court, under the compensation law, in the due exercise of its jurisdiction, *having adjudicated the character of the commerce in which the deceased was engaged*, that matter, whether rightly decided or not, must be taken as conclusively established, so long as the judgment remains unmodified \* \* \*." (Italics ours)

- (2) The Commission lacks the power to avoid the ruling of this Court and the lower Court, in the previous case, denying its motion to take further evidence on the existence of and injury to alleged competitors of respondent by instituting these new and independent proceedings for such purpose.

Apart from any application of the doctrine of *res adjudicata* in the instant case, there is still another reason why the denial by this Court (Raladam's Ex. 9), and then by the lower Court (Raladam's Ex. 7), of the Commission's motion to institute

"Further proceedings \* \* \* (1) for the taking of additional evidence, as to the competitors of petitioner herein, Raladam Company, and as to the injury to such competitors resulting from Raladam Company's unfair trade practices" etc.

is an effective bar to these proceedings.

The Federal Trade Commission is purely a creature of statute, having only such powers and duties as are conferred upon it by the Federal Trade Commission Act, being an Act of Congress approved September 26th, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (R. 44), (c. 311, 38 Stat. 717, Title 15 U. S. C. Sec. 41 *et seq.*).

While the official title of the Act: viz., "An Act to create a Federal Trade Commission, to define its powers and duties" etc., makes it plain that the provisions thereof are intended to be not only a grant but a limitation upon the powers of the Commission, for it is submitted the generally accepted meaning of the word "define" is "to limit" (Webster's New International Dictionary), the following statements by this Court in some of its recent decisions establish the matter beyond peradventure:

"The powers of the Commission are limited by the statutes." (*Federal Trade Commission v. Sinclair Refining Co.*, 261 U. S. 463, 475)

"Section 5 of the Act \* \* \* declares unfair methods of competition in commerce unlawful, prescribes the procedure to be followed, and gives the Commission power to require an offending party to cease and desist from such methods." (*Federal Trade Commission v. Western Meat Co.*, 272 U. S. 554, 557)

"While the Federal Trade Commission exercises under §5 the functions of both prosecutor and judge, the scope of its authority is strictly limited." (*Federal Trade Commission v. Klesner*, 280 U. S. 19, 27)



"The Commission is an administrative body possessing *only such powers* as are granted by statute." (*Arrow-Hart & Hegeman Electric Co. v. Federal Trade Commission*, 291 U. S. 587, 598) (*Italics ours*)

Having established that "the powers of the Commission are limited by the statutes" (*Federal Trade Commission v. Sinclair Refining Co.*, *supra*) and that "Section 5 of the Act \* \* \* prescribes the procedure to be followed \* \* \*" (*Federal Trade Commission v. Western Meat Co.*, *supra*), the only inquiry remaining is as to what provision Section 5 of the Federal Trade Commission Act makes with reference to the institution of further proceedings against a respondent, as to whom an order to cease and desist has previously been issued, which order has been reviewed and set aside by the Circuit Court of Appeals for the proper circuit, as in the previous case of *Raladam Co. v. Federal Trade Commission* (42 Fed. (2d) 430). We submit that this is the only inquiry remaining, because, under the controlling authorities immediately hereinabove discussed, the procedure provided by Section 5 of the Act is the only procedure open to the Commission.

Section 5 of the Act (Sec. 45 of Title 15, U. S. C.), which is the Section under which both the complaint in the previous case (*Raladam's Ex. 1*) and in the instant case (*R. 54*) were issued, provides, among other things, that "unfair methods of competition in commerce are declared unlawful"; empowers and directs the Commission "to prevent \* \* \* unfair methods of competition in commerce"; provides for the procedure to be followed by the Commission in such cases; gives the Circuit Court

of Appeals, for the proper circuit, jurisdiction to review the orders to cease and desist issued by the Commission, either upon application for enforcement, filed by the Commission, or petition to review, filed by the respondent, and, in that connection, "power to make and enter \* \* \* a decree affirming, modifying, or setting aside the order of the Commission"; and goes on to further expressly provide, as follows:

" \* \* \* If either party shall apply to the court for leave to adduce *additional evidence*, and shall show to the satisfaction of the court that such *additional evidence* is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper \* \* \*." (Italics ours)

Thus, it is apparent that Section 5 of the Federal Trade Commission Act makes express provision for the procedure to be followed in cases where the Commission seeks "to adduce *additional evidence*" on the issues in proceedings of the Commission, which have been reviewed and disposed of by the Circuit Court of Appeals for the proper circuit, as were the proceedings of the Commission in the previous case. The provision, in question, also discloses that obtaining leave to adduce such "additional evidence" is not merely a formality, which follows as a matter of right or as the necessary consequence of making application therefor.

On the contrary, it is expressly provided that, as a condition precedent to obtaining any such leave to adduce additional evidence, the applicant "*shall show to the satisfaction of the court that such additional evidence is*

material and that there were *reasonable grounds for the failure* to adduce such evidence in the proceeding before the Commission." In other words, the provision of Section 5 of the Act, now under discussion, clearly contemplates that the Circuit Court of Appeals shall have the sole power to determine, and then only upon a showing of the kind expressly provided for, whether the Commission shall conduct any further proceedings for the purpose of permitting, either itself or the respondent, to adduce additional evidence on issues on which the Commission has already conducted a hearing, made its findings and issued its order, and which proceedings and order have been reviewed and finally passed upon and disposed of by the Circuit Court of Appeals.

In view of the foregoing considerations, it follows, *a fortiori*, that there is only one course of procedure open to the Commission in such cases, and that is to comply with the express requirements of the statute, creating and empowering it, which are applicable thereto. It quite obviously cannot avoid those requirements by any such naive device as instituting new and independent proceedings for the purpose of adducing such additional evidence. In fact, the Commission, by making its motion to the lower Court for leave to adduce additional evidence in the previous case affirmatively recognized the requirement of the statute that it do so; and its institution of new proceedings, after that Court had denied its motion (Raladam's Ex. 7), can only be characterized as a patent attempt to circumvent such statutory requirement and the ruling of the Court, as aforesaid.

Before concluding this phase of the argument, there is a general principle of statutory construction that should be noted, because of its application to the question

under discussion, and that is the principle of "*Expressio Unius Est Exclusio Alterius*." As this Court so tersely puts it in the case of *Botany Worsted Mills v. United States*, 278 U. S. 282, 289:

" \* \* \* When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode. \* \* \* "

The principle of "*Expressio Unius Est Exclusio Alterius*" and its application are well discussed in 25 Ruling Cases, Law 981, Sec. 229.

Therefore, it is submitted that there was only one method of procedure open to the Federal Trade Commission if it wanted to adduce additional evidence on the issue involved in the previous case, and that was to follow the procedure outlined in Section 5 of the Federal Trade Commission Act, which has been hereinabove discussed. Having followed that procedure, which was the only course open to it, as aforesaid, and the lower Court having denied its application to conduct a further hearing for the purpose of adducing such additional evidence, it had reached the end of the road. Consequently, the institution of these proceedings against Raladam for the same purpose was highly improper as being beyond the power granted to the Commission, and as being, in effect, a power denied to it under the well settled principle of statutory construction known as "*Expressio Unius Est Exclusio Alterius*."

## CONCLUSION

In conclusion, then, it is submitted that the petition of the Commission for a writ of certiorari herein should be denied because the decision of the lower Court is correct, not only on the ground upon which it is based but on the additional grounds urged upon it by respondent, as aforesaid; which are immediately hereinabove discussed.

It cannot be that an administrative tribunal, after unsuccessfully prosecuting a proceeding instituted by and before itself through the highest court in the land, can ignore all that has gone before, and start anew under the same statute against the same respondent, who has in no way changed his course of conduct, merely to bring forth additional evidence of the same kind and calibre as it produced, or which was available and it could have produced, before. Certainly, under such circumstances, the respondent is entitled to the ordinary protection of the high principle of public policy that there shall be an end of litigation over a particular matter.

Furthermore, Section 5 of the Act expressly provides the procedure for the bringing forward of such additional evidence. It lays down the conditions upon which the Commission shall be permitted to bring it forth. Having availed itself of this procedure, albeit without success, the Commission has exhausted its remedies, and cannot, thus, patently circumvent the express provisions of the statute in the manner attempted herein.

In view of these considerations, if for no other reason, it seems clear that this Court should not be again re-

quired to take up its valuable time with anything so prosaic as what is well on the road to becoming a perennial controversy between respondent and the Commission over the question of whether this same course of conduct, in which the respondent was engaged at the time of the commencement of proceedings, in both the previous and the instant case, constitutes "unfair methods of competition," within the purview of the Federal Trade Commission Act. It would seem that the principles of *stare decisis* and *res adjudicata*, so frequently applied by this Court in other cases, furnish sufficient precedent for bringing any legal controversy to an end eventually, even though it be with the Commission, and respondent trusts, with a feeling of considerable poignancy, that this controversy has finally reached that stage, at long last.

Respectfully submitted,

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Attorneys for Raladam Co.,  
Respondent.







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IN THE  
Supreme Court of the United States

OCTOBER TERM, 1941

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No. 826

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FEDERAL TRADE COMMISSION,  
*Petitioner,*

v.

RALADAM COMPANY,  
*Respondent.*

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BRIEF IN BEHALF OF  
RALADAM COMPANY

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v.

RALADAM COMPANY,

*Respondent.*

---

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## BRIEF IN BEHALF OF RALADAM COMPANY

---

### STATEMENT OF THE CASE

This is the *second* time the Federal Trade Commission has proceeded against the Raladam Company upon the *same* state of facts and for the *same* alleged violation of Federal Trade Commission Act. It is also the *second* time that this Court has been asked to review such proceedings, as will more fully appear from what follows.

Raladam Company, respondent herein (hereinafter referred to as the respondent), or its predecessors, have been engaged since 1909 or 1910 (R. 81) in selling to the retail or wholesale drug trade (R. 91) a pharmaceutical preparation called Marmola Prescription Tablets (R. 80). Marmola is manufactured for respondent by Parke, Davis & Company (R. 82-3), and is recommended for the treatment of obesity (R. 96-7).

The Federal Trade Commission, petitioner and appellant herein (hereinafter referred to as the Commission), first instituted proceedings against respondent on February 29, 1928. In the preceding case<sup>1</sup>, the Commission alleged (1) that respondent was offering Marmola for sale throughout the United States "in competition with other persons who likewise engaged . . . in selling printed *professional advice*, *books* of information and instruction, and *other methods* and *means* and certain *remedies* and *appliances* for dissolving or otherwise removing excess flesh from the human body" (Old Rec. p. 3)<sup>2</sup> and (2) that "in aid of the sale" of Marmola respondent was representing that it was a "safe" and a "scientific" remedy for the treatment of obesity (Old Rec. pp. 3-4), which was alleged to be untrue, because the principal ingredient of Marmola is desiccated thyroid (Old Rec. p. 4) and "the use of thyroid for reduction . . . calls for constant professional observation, medical skill and

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1—The record and proceedings in the preceding case were offered and received in evidence in the instant case as respondent's Exhibits 1-10 (R. 74-5 and 494-8), and, although not incorporated in the printed record, are before this Court as physical exhibits pursuant to stipulation (R. 71).

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2—The printed record in the preceding case is respondent's Exhibit 1, as described in the foregoing footnote, and will be referred to throughout this brief, for the sake of convenience and to distinguish it from the Record in the instant case, as (Old Rec. p. ).

care" (Old Rec. p. 5). As a result, it was alleged in said complaint that such representations had "the tendency and capacity to mislead the purchasing public" (Old Rec. p. 5) "to the *prejudice* of the public and *competitors* of respondent, Raladam Company, and constitute *unfair methods of competition*, within the intent and meaning of Section 5 of an Act of Congress entitled 'An Act to Create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914."

Respondent joined issue on these allegations in the preceding case; and the Commission, after a lengthy hearing, found its allegations to be correct (Old Rec. 22-5)<sup>3</sup>. It based its findings, in this regard, (1) on the testimony of five doctors (Old Rec. pp. 71, 113, 139, 170-1 and 214), who opined that, while they all used desiccated thyroid, the principal ingredient of Marmola (Commission's brief herein, pp. 5-6), for the treatment of obesity (Old Rec. pp. 72, 93, 123, 145-6, 151, 176-7, 193-4, 216-7, 223-4 and 231), it was unsafe and unscientific for laymen to use it for self-medication under the Marmola directions (Old Rec. pp. 85, 115-6 119-20, 146, 184, 187, 221 and 222);<sup>4</sup> and (2) on the testimony of Director of the Bureau of Investigation of the American Medical Association (Old Rec. pp. 110-12, 130-4, and 159-69), the

3—However, the trial-examiner for the Commission, who actually heard the witnesses testify, found that: "We appear to be involved in a scientific dispute the determination of which cannot safely or justly be predicated upon the evidence contained in the record." *Raladam Co. v. Federal Trade Commission*, 42 Fed. (2nd) 430, 432, see footnote.

4—The respondent produced six doctors (Old Rec. pp. 232-3, 269, 294-5, 323, 350 and 362), who held a contrary opinion to that of the Commission's five doctors (Old Rec. pp. 248-9, 251, 263-6, 276, 278-80, 305-7, 313, 333, 335, 347-8, 352, 363-4, and 365).

testimony of one of its doctors (Old Rec. 183-4), and one of respondent's exhibits (Old Rec. 91), concerning the existence of competition. As a result, the Commission ordered respondent to cease and desist from making such statements concerning Marmola (Old Rec. pp. 26-7).

Respondent then petitioned the Circuit Court of Appeals for the Sixth Circuit to review this order, in the preceding case (Respondent's Ex. 2); and, as a result, that Court entered a decree setting the same aside (Respondent's Ex. 5). The grounds of the Circuit Court of Appeals' decision, in this regard, were that the Commission had no evidence before it that would support (1) the essential finding that respondent's representations concerning the "safety" and "scientific" nature of Marmola as a treatment for obesity were false and misleading, *as a matter of fact*, as distinguished from a mere matter of opinion or (2) the *essential* jurisdictional finding that such representations were prejudicial to competitors of respondent and, thus, constituted "unfair methods of competition" within the meaning of the statute.<sup>5</sup>

On the petition of the Commission, this Court granted certiorari, in the preceding case, expressly limited, however, to the question of the jurisdiction of the Commission (282 U. S. 829). On final hearing, this Court held that the Commission lacked jurisdiction to proceed in a given case unless it had evidence before it that would support a finding of "unfair methods of competition" within the purview of the statute, which in turn required that "there be present or potential *substantial* competition, which is shown by proof, or appears by

<sup>5</sup>—*Raladam Co. v. Federal Trade-Commission*, 42 Fed. (2nd) 480, 435, 437.



necessary inference, to have been injured or to be clearly threatened with injury, to a substantial extent, by the use of the unfair methods complained of." This Court then examined the record and found that, according to this test, the evidence before the Commission was insufficient to sustain such a finding;<sup>6</sup> and, as a result, affirmed (Respondent's Ex. 10) the decree of the Circuit Court of Appeals for the Sixth Circuit, setting aside the Commission's order to cease and desist, as aforesaid.

The Commission thereupon petitioned, first, this Court, and then the Court of Appeals, under the procedure provided in Section 5 of the Federal Trade Commission Act,<sup>7</sup> for leave to adduce "additional evidence, as to the competitors of . . . Raladam Company, and as to the injury to such competitors resulting from Raladam Company's unfair trade practices," but both this Court and the Court of Appeals denied such petitions (Respondent's Exs. 7 and 9). The petition filed by the Commission with the Court of Appeals, in this connection, contains a rather detailed description of the "additional evidence" of the alleged existence of competition and injury thereto, which the Commission was then seeking to adduce, as follows:

<sup>6</sup>—*Federal Trade Commission v. Raladam Company*, 233 U. S. 643, 651, 652-54.

<sup>7</sup>—Sec. 5 of the *Federal Trade Commission Act* (Sec. 45, Title 15, U. S. C.) provides, in part, as follows:

" . . . If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. . . ."

"Counsel for the Commission has ascertained the facts to be, and, if authority to take additional evidence shall be granted to the Commission, counsel for the Commission is able to, and will adduce competent evidence to prove:

"(1) That for many years many remedies for obesity have been, and still are being, offered for sale and sold in interstate commerce by many persons, firms, associations, or corporations in competition with Raladam Company's product.

"(2) Certain of such remedies contain thyroid, the active agent in 'Marmola', which is the product of the Raladam Company.

"(3) Certain of such remedies containing thyroid are sold without the aid of advertisements or other statements or representations that such remedies are safe and harmless.

"(4) Certain of such remedies containing thyroid and are offered for sale and sold only to persons whose overweight or obesity is caused by glandular defects or for whom the use of thyroid has been ascertained to be safe and harmless.

"(5) Certain of such remedies do not contain thyroid and are in fact safe and harmless for all users thereof.

"(6) The false and misleading statements made by the Raladam Company to the effect that practically all cases of overweight are caused by defective thyroid glands, that its remedy cures such defects, and is a pleasant, effective, safe and harmless remedy for use by all purchasers, has the tendency and capacity to, and probably will, divert trade to the Raladam Company from its said competitors, to the prejudice and injury of such competitors and the public."

Having failed to obtain the permission of either this Court or the Circuit Court of Appeals to take such "ad-

ditional evidence" of the alleged existence of competition and injury thereto, as aforesaid, the Commission waited a little over three years,<sup>8</sup> and then commenced the new and independent proceeding, which is now before this Court. This proceedings was brought under the same statute, as the preceding case, viz., Sec. 5 of the *Federal Trade Commission Act*, and was brought prior to its amendment by the Act of March 21, 1938, 15 U.S.C. Sec. 45.<sup>9</sup> The parties are the same in this case as they were in the preceding case. In addition, the subject matter was, or could have been, the same in the preceding case, as it is in the case at bar, had the Commission so willed it.

At the time of the issuance of the Commission's complaint in the preceding case, not only did respondent have alleged competitors of precisely the same kind and calibre as those which the Commission has attempted to prove herein, but respondent was then making exactly the same "statements, assertions and representations," regarding Marmola, as it was making when this case was commenced.

As to alleged competitors, this statement is readily verified, first by comparing the allegations of "Paragraph Four" of the complaint in the preceding case (Old Rec. p. 3) with "Paragraph Three" of the amended complaint herein (R. 45); and second, by comparing the findings of the Commission in the instant case, regarding

<sup>8</sup> The order of the Circuit Court of Appeals for the Sixth Circuit, denying the Commission's petition to adduce such "additional evidence" was entered in the preceding case on February 5, 1932 (Ex. 7), and the Commission instituted these proceedings in May of 1935 (Commission's brief herein, p. 4).

<sup>9</sup> See pp. 24 of Commission's brief herein, and particularly the footnote on page 2 thereof.

competition (R. 18-21), with (1) the evidence of alleged competition actually before the Commission in the preceding case (Old Rec. 91, 110-12, 130-4, 159-69, and 183-4), and (2) the Commission's own description of the "additional evidence" of competition, which it unsuccessfully sought permission to adduce in the preceding case, as aforesaid, *supra*, page 6. When this is done, it will be found that not only are the allegations of the two complaints, concerning competition, *identical in every fundamental detail*, but, more important still, that the evidence before the Commission, on this question in each case, is by any qualitative test, *exactly the same* in all essential details.

That respondent, at the time the preceding case was commenced, was making *each and every one* of the "statements, assertions and representations," regarding Marmola, upon which the Commission has based its amended complaint herein, can be verified, by comparing paragraphs "Ten," through "Sixteen" of the Commission's amended complaint in the instant case (R. 49-53) with respondent's answer to "Paragraph Two" of the complaint in the preceding case (Old Rec. pp. 8-12, and see Appendix to this brief), wherein respondent set forth, *verbatim*, most of the representations it was making, regarding Marmola, *at that time*.<sup>10</sup> When

10—There is one exception to the foregoing statement, viz., the representation, counted upon in "Paragraph Sixteen" of the Commission's amended complaint herein, that: "We feel a responsibility to those who buy Marmola and wish them to know all of the facts at our command" (R. 52), which was apparently omitted from respondent's answer to "Paragraph Two" of the complaint in the preceding case through inadvertence. However, this is of no moment, because the Commission has gone to considerable trouble in the instant case to establish that this representation was being made by respondent *before, at the time of, and after* the issuance of the complaint in the preceding case (R. 651-59). In fact, the Commission introduced three Exhibits for this purpose (Comm'n's

this is done, it will appear that respondent was making *each and every one* of the representations, upon which the Commission has based its amended complaint herein, *at the time* it issued its complaint in the preceding case, with the result that they all *could have been* counted upon therein, had the Commission seen fit to do so.

The most that can be said of the Commission's amended complaint in this case is that it is based upon some additional representations which respondent was making at the time the preceding case was commenced, and which were then available as a basis therefor; had the Commission desired to make such use of them. Moreover, in the case at bar, *as in the preceding case*, the evidence which the Commission again adduced, in the attempted proof of the alleged falsity or misleading character of these representations, is testimony by doctors that, while they would use desiccated thyroid in the treatment of obesity caused by thyroid deficiency (R. 183, 187, 193, 237, 238, 284, 329, 344, 352, and 358), they were of the *opinion* that it was unsafe for a layman to do so, under the Marmola directions and instructions, without the continued supervision of a physician (R. 187, 225, 234, 281, 2, 296, 326, and 347); and *again* the respondent produced expert testimony to the contrary (R. 505, 521, 533, 567, 571, and 604).

Upon such evidence as to the existence of alleged competition and as to the alleged dangerous character of

10—(Continued):

Ex. 43, R. 651; Comm.'s Ex. 44, R. 653; and Comm.'s Ex. 45, R. 656). While there may be some question as to whether this proof establishes that respondent was making this representation *after* the issuance of the Commission's complaint in the preceding case on February 29, 1928 (Old Rec. p. 6), it conclusively establishes that it was being made *before* and *at the time* thereof (R. 652), and hence, *could have been* counted upon by the Commission therein.



Marmola for self-medication, hereinabove discussed, the Commission *again* found (R. 15-39), *first*, that Marmola was in competition with divers "*medicines, preparations, systems, methods, books of instruction, and other commodities, articles and means* designed, intended and used for the purpose of effecting weight reduction" (R. 17);<sup>11</sup> and, *second*, that respondent's representations regarding Marmola, counted upon in the amended complaint herein, are false and misleading, primarily because a "patient taking desiccated thyroid in any case should be observed and examined at *regular intervals* by one *trained and experienced in such work* to determine its effects and whether symptoms are apparent indicating *possible* harmful results or that treatment should not be continued farther and that the ordinary layman, *treating himself or herself*, is not competent to judge when resulting symptoms indicate harm" (R. 23-4), with the result "That Marmola (desiccated thyroid) cannot be used generally for reducing purposes by *self-medication* without the *possibility* of harmful results" (R. 33).<sup>12</sup>

Based on these findings the Commission concluded that: "The aforesaid acts and practices of the respondent, Raladam Company, are to the *prejudice* of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of" the Federal Trade Commission Act (R. 39).<sup>13</sup> On the same day, the Com-

11—The Commission made substantially the same finding in "Paragraph Four" of its Findings in the preceding case (Old Rec. 22).

12—The Commission made substantially the same findings in "Paragraph Seven," subsections 2, 3, 7, 8, 9, and 10, of its Findings in the preceding case (Old Rec. 23-4).

13—This is the identical "Conclusion" which the Commission arrived at in the preceding case (Old Rec. p. 25).



mission again issued an order to cease and desist against the respondent (R. 40-44), which, though amplified in verbiage and somewhat changed in form, is the *same* in substance, as its order to cease and desist in the preceding case (Old Rec. pp. 26-7).

In view of the foregoing, respondent *again* petitioned the Circuit Court of Appeals for the Sixth Circuit to review and set aside the order of the Commission in the instant case (R. 1-15), on the following grounds:

- (1) The preceding case is *res adjudicata* of the issues now sought to be litigated by the Commission herein.
- (2) The Commission lacks the power to avoid the ruling of this Court and the Circuit Court of Appeals for the Sixth Circuit in the previous case, denying it the right to adduce additional evidence as to competition and injury thereto, by instituting these new and independent proceedings for such purpose.
- (3) The same considerations which compelled the setting aside of the Commission's order in the previous case should compel a like result in the instant case, not only under the principal of *stare decisis* but even though it were before the Court for the first time:

On October 7, 1941, the Circuit Court of Appeals for the Sixth Circuit, selecting as a basis for its action the third ground urged upon it by respondent, as aforesaid, again set aside the order to cease and desist, issued by the Commission against respondent, because "There was no substantial evidence supporting the formula of the Su-

preme Court 'that these advertisements substantially injured or intended to injure the business of any competitor . . . ' within the meaning of the statute (R. 784), this being one of the grounds of that Court's decision in the preceding case,<sup>14</sup> and the ground upon which this Court affirmed the same.<sup>15</sup>

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14—*Raladam Company v. Federal Trade Commission*, 42 F. (2d) 430, 437.

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15—*Federal Trade Commission v. Raladam Company*, 283 U. S. 643, 651, 652-4.

## ARGUMENT

- I. The decision of the Lower Court in the preceding case, as affirmed by this Court, is *res adjudicata* of the issues which the Commission is now seeking to litigate in the case at bar.<sup>16</sup>

The principal is well settled by the repeated decisions of this Court, that once a plaintiff has brought a proceeding, in which he has had the *opportunity* to present (1) *all* the issues *necessarily* involved therein, and (2) *evidence* bearing on *such* issues the final judgment therein is *res adjudicata* of *all such* matters, whether the plaintiff took advantage of such *opportunity* or not.

One of the early cases, in which the foregoing principal was applied, is that of *Beloit v. Morgan*, 7 Wall. 619, 621-3, 622-3. The pertinent parts of the opinion of this Court in that case, in which the facts are sufficiently set forth, read as follows:

“On the 9th of January, 1861, the appellee recovered a judgment at law against the appellant upon another portion of these securities—though not the same with those in question in this case. The parties were identical, and the title involved was the same. All the objections taken in this case might have been taken in that. The judgment of the court could have been invoked upon each of

<sup>16</sup>—In settling aside the order to cease and desist issued by the Commission against respondent herein, the lower Court did not base its decision on respondent's plea of *res adjudicata* (R. 781). However, under the familiar doctrine, applied by this Court in *Collier v. Standbrough*, 6 How. 14, 21; that the decision of a lower court will be affirmed on appeal on any ground appearing in the record, respondent again urges that the doctrine of *res adjudicata*, standing alone, requires affirmance here.

them, and if it were adverse to the appellant, he might have brought the decision here by a writ of error for review. The court had full jurisdiction over the parties and the subject. Under such circumstances, a judgment is conclusive, not only as to the *res* of that case, but as to all further litigation between same parties touching the same subject-matter, though the *res* itself *may* be different.

“ . . . Such has been the rule of the common law from an early period of its history down to the present time. But the principle reaches further. It extends not only to the questions of fact and of law, which were decided in the former suit, *but also to the grounds of recovery or defence which might have been, but were not, presented.* (Italics ours.)

“ . . . . .

“A party can no more split up defenses than indivisible demands, and present them by piecemeal in successive suits growing out of the same transaction. The judgment at law established conclusively the original validity of the securities described in the bill, and the liability of the town to pay them. . . .”

In the leading case of *Cromwell v. County of Sac*, 94 U. S. 351, 352-3, this Court, in discussing the scope of the bar of a former adjudication of the same controversy on any subsequent effort to re-litigate it, said:

“ . . . It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to *any other admissible matter* which might have been offered for that purpose. . . . The language, therefore, which is so often used, that a judgment estops not only as

to every ground of recovery or defence actually presented in the action, but also as to every ground which might have been presented, is strictly accurate, when applied to the demand or claim in controversy. Such demand or claim, having passed into judgment, cannot *again* be brought into litigation between the parties in proceedings at law upon *any* ground whatever."

(Italics ours.)

In *Southern Pacific Railroad v. United States*, 168 U. S. 1, 65, the United States Government brought suit to quiet title to certain lands acquired under the treaty of Guadalupe Hidalgo against the claim of the Southern Pacific Railroad, based upon certain patents. The principal issue in the case was whether certain maps filed by the Atlantic and Pacific Railroad in 1872 were valid maps of definite location—which disposed of the Railroad's claim, as the Government contended—or merely maps of general or preliminary route for the purpose of securing a preliminary withdrawal of the lands and, therefore, ineffective for such purpose. The Government contended that this same issue had previously been determined against the Railroad in another case between the same parties and could not be re-litigated in the case then before the Court. This Court, in upholding the Government, said:

"... Whatever is *new* in the evidence now before us, touching that matter, is *simply cumulative* on the one side or the other. The application to consider that evidence is *practically* an application for a rehearing as to things directly determined in the former suits between the same parties, and which adjudication has never been modified. Such a course of procedure is wholly inadmissible under the settled rule of *res judicata*. Without, therefore, expressing any opinion as to the effect of this new

evidence relating to matters once finally adjudged, we hold that the Southern Pacific Railroad Company cannot, in this proceeding, question the validity of those maps as maps of definite location." (Italics ours.)


In the case of *Werlein v. New Orleans*, 177 U. S. 390, 398, 399-400, the City of New Orleans brought suit to recover certain lands from the defendant on the ground that he had no valid title thereto. The defendant pleaded *res adjudicata* and offered in evidence in support of such plea a decree against the City in a previous action it had brought to enjoin the execution sale at which the defendant acquired title. From a ruling of the trial court refusing to permit the defendant to introduce such decree in evidence the defendant appealed; and this Court, in holding that the trial court had committed error in so ruling, said:

"It is, however, contended that as the city had only set up *certain facts* as the foundation of its action to prevent the alleged illegal sale of the property, the judgment only bound it *as to those facts*, and therefore it is now urged that the city in this action was at liberty to prove *other facts* which would also show that Klein had no right to sell the property, namely, that the property had long before the sale been dedicated to public use, and the city therefore had no right to alienate it, nor had any one the right to sell it upon an execution issued on a judgment against the city.

.....

"... the question in this case is, what effect has this judgment under discussion upon the rights of the parties?

"The fact now alleged would have furnished in the chancery suit but *another ground or reason* upon which to base the claim of the city, that Klein had no right to sell the property under his writ.





In other words, it would have been *additional proof of the cause of action* set forth in that suit. . . .

"The threatened sale might have been illegal for a number of reasons, based upon widely divergent facts, but whatever those reasons were, the facts upon which they rested were open to proof in the chancery action, and if the city desired the benefit of them, they should have been alleged and proved. It would seem to be quite clear that the plaintiff could not be permitted to prove *each independent fact* in a *separate suit*. . . . If not, then on being beaten on a trial of that issue the city could commence still another action based on the allegation that the judgment had been paid. Thus, as many different actions as the city might allege grounds for claiming the sale would be illegal could be maintained *seriatim*, and no one judgment would conclude the city except as to the particular ground upon which the city proceeded in each particular case. And yet all these different grounds *would simply form evidence upon which the original cause of action was based*, namely, the alleged illegality of the apprehended sale. . . ."

(Italics ours.)

In *United States v. California and Oregon Land Co.*, 192 U. S. 355, 358, 360, the Government brought a suit to have certain land patents held invalid because lands covered thereby had previously been set aside for an Indian reservation. The defendant pleaded *res adjudicata* on the ground that the Government had brought an earlier case involving the same issue, in which judgment had gone against the Government. In an opinion sustaining the defendant's plea, Mr. Justice Holmes, speaking for this Court, said:

" . . . The best that can be said, apart from the act just quoted, to distinguish the two suits, is that now the United States puts forward a new ground for its prayer. Formerly it sought to avoid

the patents by way of forfeiture. Now it seeks the same conclusion by a *different means*, that is to say, by *evidence* that the lands originally were excepted from the grant. But in this, as in the former suit, it seeks to establish its own title to the fee.

“ . . . the whole tendency of our decisions is to require a plaintiff to try his whole cause of action and his whole case at one time. He cannot even split up his claim [citing cases]; and, a *fortiori*, he cannot divide the grounds of recovery.

“ . . . It would not be *consistent with the good faith of the United States* to attribute to it the intent to keep a concealed weapon in reserve in case these suits should fail. . . .”

(Italics ours.)

In the recent case of *Chicot County Drainage District v. Baxter State Bank*; 308 U. S. 371, 375, this Court again applied the principle under discussion against the right of the plaintiffs to maintain an action on some bonds of an issue which had been the subject of an earlier action to which these same plaintiffs were parties, and in which there had been a decree of cancellation. This was done despite the fact that the earlier action had been brought under a statute that had been subsequently declared unconstitutional. In so doing, the Court said:

“ . . . As parties, these bondholders had full opportunity to present any objections to the proceedings, not only as to its regularity, or the fairness of the proposed plan of readjustment, or the propriety of the terms of the decree, but also as to the validity of the statute under which the proceeding was brought and the plan put into effect. Apparently no question of validity was raised and the cause proceeded to decree on the assumption

by all parties and the court itself that the statute was valid. There was no attempt to review the decree. If the general principles governing the defense of *res judicata* are applicable, these bondholders, having the opportunity to raise the question of invalidity, were not *the less bound* by the decree because they failed to raise it. \* \* \*

(Italics ours.)

In view of the foregoing decisions of this Court, no extended argument is necessary to show that the doctrine of *res adjudicata* is peculiarly applicable to the facts presented by the record in the case at bar (discussed, *supra*, pp. 1-12). In other words, it is apparent from the record herein that the Commission had "a full opportunity" in the preceding case to base its complaint therein on any and all of respondent's representations regarding Marmola upon which it now bases its amended complaint in the instant case. It is equally apparent that the Commission had "a full opportunity" in the preceding case "to present" evidence in the attempted proof of the allegations of the complaint therein on the question of unfair methods of competition within the purview of the statute.

If by any chance any portion of the evidence now offered was unavailable at the time the earlier case was heard—and this is not at all certain—it is perfectly clear that such evidence is wholly cumulative and that the Commission either did, or *could have produced*, had it then seen fit, other evidence of *precisely the same kind and calibre*—in fact *substantially identical evidence* which was then available. Having failed to offer such evidence in the preceding case, the Commission cannot avoid the effect by adduc-  
like evidence in the case at bar (*Southern Pac. R. R. v. U. S.*, *supra*, pp. 15-6).

As we have already pointed out (*supra*, pp. 7-8), the truth of this statement may be easily verified, *first*, by comparing the allegations of "Paragraph Four" of the complaint in the preceding case (Old Rec. p. 3) with "Paragraph Three" of the amended complaint herein (R. 45); and; *second*, by comparing the findings of the Commission in the instant case regarding competition (R. 18-21) with (1) the evidence of alleged competition actually before the Commission in the preceding case (Old Rec. 91, 110-12, 130-4, 159-69, and 183-4), and (2) the Commission's own description of the "additional evidence" of competition, which it unsuccessfully sought permission to adduce in the preceding case (*supra*, p. 6).

Under these circumstances, it is clear—as this Court so aptly put it in the *Baxter State Bank* case (*supra*, pp. 18-9)—that the Commission "is none the less bound by the decree" in the preceding case merely because it failed to present such evidence of competition therein.

Nor does the foregoing comparative analysis of the pertinent parts of the record in each of these cases brought by the Commission against respondent afford the only support for such a conclusion. As a matter of fact, its verity is further established by the petition which the Commission presented, pursuant to Section 5 of the Statute,<sup>17</sup> first, to this Court, and then to the lower Court in the preceding case (discussed, *supra*, pp. 5-6) after its decree setting aside the Commission's order to cease and desist had been affirmed by this Court. In this petition the Commission requested

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17—See footnote 7<sup>o</sup> (*supra*, p. 5) for text of provision under discussion, and, *infra*, pages 27-32 for discussion of effect of this petition as furnishing an independent bar to the commencement of the instant case, apart from the application of the doctrine of *res adjudicata*.

the lower Court to modify its decree so "as to provide that such decree of reversal is without prejudice to further proceedings before the Commission in this cause (1) for the taking of *additional* evidence as to the *competitors* of petitioner herein, Raladam Company, and as to the *injury to such competitors* resulting from Raladam Company's unfair trade practices and (2) for making of further findings of fact and a further order based on such additional evidence."

First this Court, and then the lower Court, after receiving the briefs of the Commission and respondent on the matter, entered orders denying the said petition (Respondent's Exs. 7 and 9); and it is submitted that these orders were, in effect, a direct adjudication of the question of the Commission's right to institute any further proceedings against respondent for the purpose of taking *additional* evidence on the question of *the existence of and injury to alleged competitors* of respondent.

Thus, not only has the Commission had its day in court in the preceding case on the very issues it is now seeking to re-litigate in the instant case, but, more conclusive still, it has had its day in court on the express question of whether it was entitled to conduct any further proceedings against respondent for the purpose of taking *additional* evidence on such issues. In other words, this Court is presented with a double basis for applying the doctrine of *res adjudicata* in the instant case, although either basis is sufficient.

In a feeble attempt to avoid this clear-cut application of the doctrine of *res adjudicata* to facts presented by the record herein, the Commission advances the following patently fallacious propositions in its brief:



"The judgment entered in *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, is not an absolute bar to the present proceeding because the proceeding is not upon the same claim as that made in the earlier case and does not present the same questions as were there determined. The respective claims involve conduct in different periods of time as well as materially different representations. Moreover, the prior case adjudged only the insufficiency of the particular evidence introduced in that proceeding; the present case concerns the sufficiency, not of that evidence, but of the totally different evidence introduced in this proceeding." (Commission's Brief pp. 12-13.)

The Commission advanced these same propositions in the Court below; and, in answer to the first proposition, respondent cited this Court's decision in *Tait v. Western Maryland Railway Co.*, 289 U. S. 620, 623, 624, and we again submit that this decision disposes of the same beyond peradventure. The pertinent parts of the Court's opinion read as follows:

"The petitioner seeks a reversal on the merits, asserting that a judgment in a suit concerning income tax for a given year cannot estop either of the parties in a later action touching liability for taxes of another year. \* \* \*

\* \* \* \* \*

"As petitioner says, the scheme of the Revenue Acts is an imposition of tax for annual periods, and the exaction for one year is distinct from that for any other. But it does not follow that Congress in adopting this system meant to deprive the government and the taxpayer of relief from redundant litigation of the identical question of the statute's application to the taxpayer's status.

"This court has repeatedly applied the doctrine of *res adjudicata* in actions concerning state taxes,



holding the parties concluded in a suit for one year's tax as to the right or question adjudicated by a former judgment respecting the tax of an earlier year . . . ."

(Italics ours.)

However, the Commission insists, on pages 34-5 of its brief, that the foregoing decision is distinguishable from the present case. Its statement in this regard reads as follows:

"*Tail v. Western Maryland Ry. Co.*, 289 U. S. 620, upon which respondent relies, has no application to the present case because there the question in issue in the two cases was dependent upon the same historical events, whereas here the questions in issue in the two cases are dependent upon the varying and variable facts currently existing in two separate periods of time: . . . ."

"In suits upon different claims a prior judgment is not always conclusive as between the parties even where the question in issue is dependent upon the same historical events. *Blair v. Commissioner of Internal Revenue*, 300 U. S. 5. . . ."

In making any such statement, then, the Commission not only discloses that it has not carefully read the decision of this Court in the *Blair* case, which it cites in support thereof, as will be more fully hereinafter pointed out, but it completely begs the question. It does this by assuming that the preceding case and the instant case "are suits upon different claims," whereas they are *actually* suits upon exactly the same claim, so far as the proper application of the doctrine of *res adjudicata* is concerned. This conclusion is inescapable once the facts presented by the record herein (*supra*, pp. 1-12) are examined in the light of the foregoing decisions of this Court (*supra*, pp. 13-19).

As we have already pointed out, the most that can be said for the Commission is that the present case covers "a different period of time" than does the preceding case, but the important point is that during each of these two "periods of time" the respondent was making the same representations regarding Marmola (*supra*, pp. 8-9), and had either the same competitors or competitors of the same kind and calibre (*supra*, pp. 7-8); and the doctrine of *res adjudicata* is equally applicable under either of these situations.

In other words, the fact that two suits cover "different periods of time" is, in and of itself, of no particular importance so far as the application of the doctrine of *res adjudicata* is concerned, provided (1) the parties are the same, (2) the statute under which they are brought is the same, and (3) the subject matter is the same. In fact, such a situation frequently arises and, nevertheless, it has been invariably held by this Court that the final judgment in the former case is a complete bar to the second.

It is conceded by the Commission that both the parties and the statute involved in the preceding case and the case at bar are identical; but the Commission seems to think that because it has brought a proceeding covering "a different period of time" in which (1) it has counted upon some additional representations regarding Marmola which might have been covered in its complaint in the preceding case, had it seen fit to do so, and in which (2) it has adduced some additional evidence of competition of the same kind and calibre as it produced, or had a "full opportunity" to produce in the preceding case, it has successfully avoided the application of the doctrine of *res adjudicata*.

If any further authority—in addition to the foregoing decisions of this Court (*supra*, pp. 13-19)—including *Tait v. Western Maryland Railway Co.* (*supra*, pp. 22-23)—is needed to demonstrate that this is not so, it is furnished by the case of *Blair v. Commissioner of Internal Revenue*, 300 U. S. 5, cited on page 35 of the Commission's brief, as aforesaid, apparently through inadvertance or mistake. On page 9 of its opinion in that case this Court said:

“It is not necessary to review the respective contentions upon this point, as we think that the ruling in the *Tait* case is not applicable. That ruling and the reasoning which underlies it apply where in the subsequent proceeding, although relating to a different tax year, *the questions presented upon the facts and the law are essentially the same.* *Tait v. Western Maryland Ry. Co.*, *supra*, pp. 624, 626. Here, after the decision in the first proceeding, the opinion and decree of the state court created a new situation. The determination of petitioner's liability for the year 1923 had been rested entirely upon the local law. *Commissioner v. Blair*, 60 F. (2d) 340, 342, 344. The supervening decision of the state court interpreting that law in direct relation to this trust cannot justly be ignored in the present proceeding so far as it is found that the local law is determinative of any material point in controversy. . . .”

(Italics ours)

Finally, the Commission seems to intimate elsewhere in its brief that this Court was wrong and should reverse itself if it actually meant what it said in the preceding case. It was held therein that the Commission lacks jurisdiction to proceed in a given case unless it has evidence before it to support a finding of “unfair methods of competition” within the purview of the statute,

which in turn requires that "there be present or potential *substantial* competition, which is shown by proof, or appears by *necessary* inference, to have been injured or to be *clearly* threatened with injury to a substantial extent, by the use of the unfair methods complained of."<sup>18</sup>

With respect to the applicability of the doctrine of *res adjudicata* to the instant case, it makes no difference whether this Court rendered a correct decision in the preceding case or not. The doctrine applies with equal force in either event, as appears from the *Baxter State Bank* case, *supra*, pp. 18-19. This is also well settled by many other decisions of the Court, including *Chicago, Rock Island & Pacific Railway Co. v. Schendel*, 270 U. S. 611, 617. In that case this Court ruled:

"The Iowa court, under the compensation law, in the due exercise of its jurisdiction, having adjudicated *the character* of the commerce in which the deceased was engaged, that matter, *whether rightly decided or not*, must be taken as conclusively established, so long as the judgment remains unmodified \* \* \*"

(Italics ours)

The following cases are other decisions of this Court in which there was a similar holding:

- Scotland County v. Hill*, 112 U. S. 183, 187;
- Gunter v. Atlantic Coast Line Railroad*, 200 U. S. 273, 290;
- Chesapeake & Ohio Railway Co. v. McCabe*, 213 U. S. 207, 221;
- Stoll v. Gottlieb*, 305 U. S. 165, 172; and
- Treinius v. Sunshine Mining Co.*, 308 U. S. 66, 78.

18—*Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 651.

- II. The Commission lacks the power to avoid the ruling of this Court and the lower Court, in the preceding case, denying its motion to take further evidence on the existence of and injury to alleged competitors of respondent by instituting these new and independent proceedings for such purpose.

The denial by this Court (Respondent's Ex. 9), and then by the lower Court (Respondent's Ex. 7), of the Commission's petition to institute

"Further proceedings . . . (1) for the taking of additional evidence, as to the competitors of petitioner herein, Raladam Company, and as to the injury to such competitors resulting from Raladam Company's unfair trade practices" etc.

is an effective bar to these proceedings, apart from requiring the application of the doctrine of *res adjudicata* herein, as aforesaid (*supra*, pp. 20-21).

The Federal Trade Commission is purely a creature of statute, having only such powers and duties as are conferred upon it by the Federal Trade Commission Act, being an Act of Congress approved September 26th, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (R. 44), (c. 311, 38 Stat. 717, Title 15 U. S. C., Sec. 41 et seq.)

While the official title of the Act: viz., "An Act to create a Federal Trade Commission, to define its powers and duties" etc., makes it plain that the provisions thereof are intended to be not only a grant but a limitation upon the powers of the Commission, for it is submitted that the



generally accepted meaning of the word "define" is "to limit" (Webster's New International Dictionary), the following statements by this Court in some of its recent decisions establish the matter beyond peradventure:

"The powers of the Commission are limited by the statutes." (*Federal Trade Commission v. Sinclair Refining Co.*, 261 U. S. 463, 475)

"Section 5 of the Act \* \* \* declares unfair methods of competition in commerce unlawful, *prescribes the procedure to be followed*, and gives the Commission power to require an offending party to cease and desist from such methods." (*Federal Trade Commission v. Western Meat Co.*, 272 U. S. 554, 557)

"While the Federal Trade Commission exercises under §5 the functions of both prosecutor and judge, the *scope of its authority is strictly limited*." (*Federal Trade Commission v. Klesner*, 280 U. S. 19, 27)

"The Commission is an administrative body possessing *only such powers as are granted by statute*." (*Arrow-Hart & Hegeman Electric Co. v. Federal Trade Commission*, 291 U. S. 587, 598)

(Italics ours)

Having established that "the powers of the Commission are limited by the statutes" (*Federal Trade Commission v. Sinclair Refining Co.*, *supra*) and that "Section 5 of the Act \* \* \* prescribes the procedure to be followed \* \* \*" (*Federal Trade Commission v. Western Meat Co.*, *supra*), the only inquiry remaining is as to what provision Section 5 of the Federal Trade Commission Act makes with reference to the institution of further proceedings against a respondent, as to whom an order to



cease and desist has previously been issued, which order has been reviewed and set aside by the Circuit Court of Appeals for the proper circuit, as in the previous case of *Raladam Co. v. Federal Trade Commission* (42 Fed. (2d) 430). We submit that this is the only inquiry remaining, because, under the controlling authorities immediately hereinabove discussed, the procedure provided by Section 5 of the Act is the only procedure open to the Commission.

Section 5 of the Act (Sec. 45 of Title 15, U. S. C.), which is the Section under which both the complaint in the previous case (Old Rec. p. 2) and the amended complaint in the instant case (R. 44) were issued, provides, among other things, that "unfair methods of competition in commerce are declared unlawful"; empowers and directs the Commission "to prevent . . . unfair methods of competition in commerce"; provides for the procedure to be followed by the Commission in such cases; gives the Circuit Court of Appeals, for the proper circuit, jurisdiction to review the orders to cease and desist issued by the Commission, either upon application for enforcement, filed by the Commission, or petition to review, filed by the respondent, and, in that connection, "power to make and enter . . . a decree affirming, modifying, or setting aside the order of the Commission"; and goes on to further expressly provide, as follows:

" . . . If either party shall apply to the court for leave to adduce *additional evidence*, and shall *show* to the satisfaction of the court that such *additional evidence is material* and that there were *reasonable grounds for the failure to adduce such evidence in the proceeding before the commission*, the court may order such additional evidence to be taken before the commission and to be adduced

upon the hearing *in such manner* and upon *such terms and conditions* as to the court may seem proper \* \* \* (Italics ours)

Thus, it is apparent that Section 5 of the Federal Trade Commission Act makes *express* provision for the procedure to be followed in cases where the Commission seeks "to adduce *additional evidence*" on the issues in proceedings of the Commission, which have been reviewed and disposed of by the Circuit Court of Appeals for the proper circuit, as were the proceedings of the Commission in the preceding case. The provision, in question, also discloses that obtaining leave to adduce such "additional evidence" is not merely a formality, which follows as a matter of right or as the necessary consequence of making application therefor.

On the contrary, it is expressly provided that, as a condition precedent to obtaining any such leave to adduce additional evidence, the applicant "*shall show to the satisfaction of the court* that such additional evidence is *material* and that there were *reasonable grounds for the failure* to adduce such evidence in the proceeding before the Commission." In other words, the provision of Section 5 of the Act, now under discussion, clearly contemplates that the Circuit Court of Appeals shall have the *sole* power to determine, and then *only* upon a showing of the kind expressly provided for, whether the Commission shall conduct any further proceedings for the purpose of permitting, either itself or the respondent, to adduce additional evidence on issues on which the Commission has already conducted a hearing, made its findings and issued its order, and which proceedings and order have been reviewed and finally passed upon and disposed of by the Circuit Court of Appeals. Further-

more, if such permission is granted, the Court may *specify* the "*manner*" and the "*terms and conditions*," upon such "additional evidence" may be adduced, if at all,

In view of the foregoing considerations, it follows, *a fortiori*, that there is only one course of procedure open to the Commission in such cases, and that is to comply with the *express* requirements of the statute, creating and *empowering* it, which are applicable thereto. It quite obviously cannot avoid those requirements by any such naive device as instituting new and independent proceedings for the purpose of adducing such additional evidence. In fact, the Commission, by making its motion to the lower Court for leave to adduce additional evidence in the preceding case affirmatively recognized the requirement of the statute that it do so; and its institution of new proceedings, after that Court had denied its motion (Respondent's Ex. 7), can only be characterized as a patent attempt to circumvent such statutory requirement and the ruling of the lower Court, as aforesaid.

Before concluding this phase of the argument, there is a general principle of statutory construction that should be noted, because of its application to the question under discussion, and that is the principle of "*Expressio Unius Est Exclusio Alterius*." As this Court so tersely puts it in the case of *Botany Worsted Mills v. United States*, 278 U. S. 282, 289:

" . . . When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode. . . ."

The principle of "*Expressio Unius Est Exclusio Alterius*" and its application are well discussed in 25 Ruling Case, Law 981, Sec. 229.

Therefore; it is submitted that there was only one method of procedure open to the Federal Trade Commission if it wanted to adduce additional evidence on the issue involved in the preceding case, and that was to follow the procedure outlined in Section 5 of the Federal Trade Commission Act, which has been hereinabove discussed. Having followed that procedure, which was the only course open to it, as aforesaid, and the lower Court having denied its application to conduct a further hearing for the purpose of *adducing* such *additional evidence*, the Commission has reached the end of the road. Consequently, the institution of these proceedings against respondent for the same purpose was highly improper as being beyond any power granted to the Commission, and as being, in effect, a power denied to it under the well settled principle of statutory construction known as "*Expressio Unius Est Exclusio Alterius*."

**III. The same considerations which compelled the setting aside of the Commission's order in the preceding case should compel a like result in the instant case, not only under the principle of *stare decisis*, but even though it were before the Court for the first time.**

The principal argument advanced by the Commission for reversing the lower Court is that it either incorrectly applied the decision of this Court in the preceding case (Commission's brief, pp. 13-23), or that such decision is wrong, insofar as it requires a "showing of injury to competitors," as a basis for the Commission to issue an order to cease and desist (Commission's brief, pp. 24-28). In developing the first of these alternative contentions, the Commission seeks to demonstrate that the lower Court interfered with the Commission's alleged

prerogative to make conclusive findings of fact, provided they appear to be supported by *any* evidence, and even though they involve conclusions of law. That the Commission is incorrect in this position, and that the lower Court has correctly applied the decision of this Court in the preceding case, will fully appear from the following discussion.

**A. Since the reviewing court must ultimately determine the question of what constitutes "unfair methods of competition in commerce," within the purview of the statute, in a given case, it is not limited, in reviewing findings of the Commission in this regard, as in reviewing mere findings of fact.**

This Court has repeatedly held, in a long line of decisions, commencing with *Federal Trade Commission v. Gratz*, 253 U. S. 421, and including the previous case of *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, that the question of what constitutes "unfair methods of competition in commerce" within the purview of the statute in a given case is one for ultimate determination by the courts rather than by the Commission. In the *Gratz case*, *supra*, this Court said on page 427 of its opinion:

"The words 'unfair methods of competition' are not defined by the statute and their exact meaning is in dispute. *It is for the courts, not the commission, ultimately to determine as matter of law what they include.* . . ."

(Italics ours)

In *Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441, 453, in affirming the decision in the *Gratz case*, and elaborating on the reasons therefor, this Court held:



“ . . . Congress deemed it better to leave the subject [‘unfair methods of competition’] without precise definition, *and to have each case determined upon its own facts*, owing to the multifarious means by which it is sought to effectuate such schemes. The Commission, *in the first instance, subject to the judicial review provided*, has the determination of practices which come within the scope of the act. (See Report No. 597, Senate Committee on Interstate Commerce, June 13, 1914, 63rd Cong., 2nd Sess.)”

(Italics ours)

In the previous case of *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 648, this Court, following its earlier decisions, again held that:

“ . . . Undoubtedly the substituted phrase [‘unfair methods of competition’] has a broader meaning *but how much broader has not been determined*. It belongs to that class of phrases *which do not admit of precise definition*, but the meaning and application of which *must be arrived at* by what this court elsewhere has called ‘the gradual process of judicial inclusion and exclusion.’ *Davidson v. New Orleans*, 96 U. S. 97, 104. The question is one for the final determination of the courts and not of the Commission. *Federal Trade Comm. v. Gratz*, 253 U. S. 421, 427; *Federal Trade Comm. v. Beech-Nut Co.*, *supra*, p. 453.”

(Italics ours)

In *Standard Oil Co. v. Federal Trade Commission* (C.C.A., 2nd Cir.), 273 F. 478, 481, which was affirmed by this Court in *Federal Trade Commission v. Sinclair Refining Co.*, 261 U. S. 463, 465, it was held:

“ . . . And this rule [that ‘The question is one for final determination by the courts.’] is not avoided by [the Commission] stating as a finding of fact what is a mere conclusion of law. . . .”



Under the foregoing decisions, it is apparent that the question of what constitutes "unfair methods of competition," within the purview of the statute, in a given case, is one for ultimate determination by the courts rather than by the Commission. This is so, because "Congress deemed it better to leave the subject without precise definition, and to have each case determined on its own facts," with the result that "The Commission [merely], in the first instance, subject to judicial review, has the determination of practices which come within the scope of the act" (*Fed. Trade Comm. v. Beech Nut Packing Co.*, discussed *supra* pp. 33-4).

Hence, a court, in reviewing the finding of the Commission on this question, in a given case, has the right and, in fact, the duty to examine the record fully for the purpose of determining whether the evidence before the Commission is sufficient to sustain such finding, just as this Court did in each of the cases hereinabove discussed, including the previous case of *Federal Trade Commission v. Raladam Company*, *supra*, page 34; "And this rule is not avoided by [the Commission] stating as a matter of fact what is a mere conclusion of law" (*Standard Oil Co. v. Federal Trade Comm.*, discussed, *supra*, p. 34). Obviously, then, the function of the reviewing court, where such a finding of the Commission is challenged, is not merely perfunctory, the contentions of the Commission in the case at bar to the contrary notwithstanding.

The cases of *Federal Trade Commission v. Pacific States Paper Trade Association*, 273 U. S. 52, 62, and *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73, cited by the Commission on page 19 of its brief, do not in any way impinge upon the principles laid down by this Court in the decisions hereinabove dis-

cussed. Those cases merely applied, under proper circumstances, the express provision of the statute (Sec. 45, Title 15, U. S. C.) that "The findings of the Commission *as to facts*, if supported by the testimony, shall be conclusive," and, therefore, held that where the Commission has evidence before it to support its inferences and findings, *as to matters of fact*, the reviewing court cannot make any independent appraisal of such evidence for the purpose of drawing different inferences or making different findings in regard thereto.

This of course presupposes the existence of substantial evidence in the record to support such inferences and findings. Hence it is clear, in addition, despite the confusion in which the Commission seems to frequently find itself regarding the matter, that its prerogative to make findings and draw inferences that are conclusive, providing there is evidence in the record, conflicting or otherwise, to support the same, does not include, and hence does not deprive the reviewing court of, the right to determine whether there is, in fact, any substantial evidence in the record.

In this connection it should particularly be noted that the inferences and findings of the Commission are not conclusive on the reviewing court, unless there is evidence in the record to support them, which is *substantial*. As this Court said in the recent case of *National Labor Relations Board v. Columbian Enameling & Stamping Co.*, 306 U. S. 292, 299-300, in speaking of the conclusiveness of findings of a similar administrative tribunal:

"Section 10 (e) of the Act provides: " . . . The findings of the Board as to the facts, if supported

by evidence, shall be conclusive.' But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is *substantial*, that is, affording a *substantial basis of fact* from which the fact in issue can be reasonably inferred (citing cases)."

(Italics ours)

- B. The decision of the lower Court was rendered in accordance with *Federal Trade Comm. v. Raladam Co.*, 283 U. S. 643, and, hence, does not invade the province of the Commission to make findings of fact that are conclusive, if supported by substantial evidence.**

While the Commission devotes space in its brief to the discussion of such irrelevant matters as its finding concerning the care exercised by doctors in administering desiccated thyroid (Commission's brief, p. 6), and the dollar volume of Marmola sales per year (Commission's brief, p. 7) in what is apparently an attempt to confuse the issues and bias the Court against the respondent, the only contentions in the Commission's brief deserving of any discussion are, *first*, its contention that the lower Court has incorrectly applied the decision of this Court in the preceding case, and, *second*, its contention that, if such is not the case, this Court's decision in the preceding case is wrong.

This Court, in the preceding case, after holding on page 648 of its opinion that the question of what constitutes "unfair methods of competition in commerce," within

the purview of the statute, in a given case, "is one for the final determination of the courts and not of the Commission, as hereinabove noted, *supra* page 34, went on to point out, on page 651 of its opinion, that:

"While it is impossible from the terms of the act itself, and in the light of the foregoing circumstances leading up to its passage, reasonably to conclude that Congress intended to vest the Commission with the general power to prevent all sorts of unfair trade practices in commerce apart from their actual or potential effect upon the trade of competitors, it is not necessary that the facts point to any particular trader or traders.<sup>19</sup> It is enough that there be present or potential *substantial* competition, which is shown by proof, or appears by *necessary* inference, to have been injured, or to be

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19—As pointed out to the lower Court in respondent's petition for review herein (R. 13-15), it is apparent from the instant case, and the many other cases of like nature which the Commission has brought (Commission's brief, p. 23), that its real purpose is to suppress all trade in proprietary medicines designed to be used for self-medication in the treatment of obesity, and to thus create and foster a monopoly in the medical profession, in regard thereto, rather than to actually protect any trader or traders from unfair competition. The Commission has attacked the proprietary medicine industry upon two grounds: (1) That any product not containing thyroid, or a similar substance, is ineffective in obesity and therefore may not be advertised or sold, because to do so would violate the Act; or (2) That any product containing thyroid, or a similar effective agent, while it may be safely used by doctors, is not safe for *self-medication*. To accomplish this purpose it has played one proprietary medicine company against another, as being "the competition" it was allegedly seeking to protect, with a view to putting all of them out of business eventually, *ad seriatim*, as it were.

Hence, the effect of this insidious program is to pervert the Federal Trade Commission Act from its real purpose, by completely eliminating and suppressing all trade in this field, and by creating a monopoly in the medical profession in the use of all medicine for the treatment of obesity. Certainly, Congress never intended, when it passed this statute, to grant the Federal Trade Commission the power to foster such a monopoly, should it see fit.

clearly threatened with injury, to a *substantial* extent by the use of the unfair methods complained of."

(Italics ours)

This Court then proceeded to carefully analyze the evidence, which the Commission had before it on the hearing, and to conclude it was insufficient to support a finding essential to the Commission's jurisdiction that respondent was engaged "in unfair methods of competition" within the purview of the statute, due to the failure of such evidence to meet the test laid down on page 651 of its opinion, as *aforsaid*. The pertinent part of the Court's opinion in this connection is found on pages 652-53, and reads as follows:

"Findings of the Commission justify the conclusion that the advertisements naturally would tend to increase the business of respondent; but there is neither finding nor *evidence* from which *the conclusion legitimately can be drawn* that these advertisements *substantially* injured or tended thus to injure the business of any competitor or of competitors generally, whether legitimate or not. . . . It is impossible to say whether, as a result of respondent's advertisements, any business was diverted, or was likely to be diverted, from others engaged in *like trade*, or whether *competitors*, identified or unidentified, *were injured* in their business, or *were likely to be injured*, or, indeed, whether any other anti-obesity remedies were sold or offered for sale in competition, or were of such a character as naturally to come into *any real competition*, with respondent's preparation in the interstate market. All this was left without proof and remains, at best, a matter of conjecture. *Something more substantial than that is required as a basis for the exercise of the authority of the Commission.*"

(Italics ours)



The lower Court in the instant case, after carefully reviewing the opinion of this Court in the preceding case to find the true basis thereof, and then reviewing and discussing the evidence before the Commission as this Court had done in the preceding case, as aforesaid, came to the unavoidable conclusion that such evidence was insufficient, under the test laid down in this Court's opinion, to support the Commission's jurisdictional finding that the respondent was engaged in "unfair methods of competition," within the purview of the Act. In this connection, the lower Court said (123 F. (2d) 34, 37-8) (R. 784-85):

" . . . There was *no substantial evidence* supporting the formula of the Supreme Court 'that these advertisements substantially injured or tended to injure the business of any competitor' . . ."

" . . . We find *no evidence* in the record upon which a *substantial inference* can be based that this was so. We cannot approve the finding of the Commission upon pure speculation. . . ."

(Italics ours)

Upon examining the Record, the lower Court found that the evidence, upon which the Commission had based its findings that respondent was engaged in "unfair methods of competition, within the intent and meaning of Section 5" of the statute was of essentially the same kind and calibre, and therefore subject to the same deficiencies found by this Court in the evidence before the Commission in the preceding case.

In other words, as in the preceding case, the Commission has again failed to adduce evidence from which it is possible "to say whether, as a result of respondent's advertisements, any business was diverted, or was likely to be diverted, from others engaged in like trade, or



whether competitors, identified or unidentified, were injured in their business, or were likely to be injured, etc.” (Page 653 of this Court’s opinion in the previous case, discussed, *supra*, p. 39).

Therefore, to epitomize the decision of the lower Court, it was bound to conclude, as it did conclude, that “There was no substantial evidence supporting the formula of the Supreme Court ‘that these advertisements substantially injured or tended to injure the business of any competitor . . . ,’” with the necessary result that the Commission’s jurisdictional finding that the respondent herein is engaged in “unfair methods of competition in commerce, within the intent and meaning of Section 5” of the Act, is again lacking in evidence to support it.

With regard to the Commission’s contention that the *Winsted Hosiery* case (258 U.S. 483) requires a different decision than the one arrived at by the lower Court herein (Commission’s brief, pp. 17-20), it should be noted this same contention was urged upon this Court by the Commission in the preceding case, and was disposed of unfavorably to the Commission on pages 651-52 of the opinion therein. Thus, it is submitted that the Commission’s pertinacity in this regard is worthy of a better cause.

In view of the foregoing, it is perfectly clear that the decision of the lower Court does not invade the province of the Commission to make findings of fact that are conclusive, if supported by *substantial* evidence. We have already seen in this connection that, in all cases, “The question is one for final determination of the courts and not of the Commission” (*Fed. Trade Comm. v. Raladam Co.*, and other cases discussed, *supra*, pp. 33-34); and that, in the instant case, the lower Court, after analyzing

the evidence in the Record, just as this Court had done in the previous case, based its decision squarely upon the fact that "There was *no* substantial evidence [before the Commission] supporting the formula of the Supreme Court 'that these advertisements substantially injured or tended to injure the business of any competitor . . .'" (R. 784). Hence, nothing more should be necessary to demonstrate that the Commission's contention that "the decision below" invades the province of the Commission to make conclusive findings of fact, if supported by substantial evidence is utterly unfounded.

We submit that the Commission has apparently again, as in the past, confused its prerogative to make conclusive findings of *fact*, if supported by substantial evidence, with the prerogative of the reviewing court to ultimately determine (1) whether there is, in fact, any *substantial* evidence to support the findings of the Commission, on matters of fact, and (2) what *legal results* follow from the facts *properly* found.

**C. This Court rendered a correct decision in the preceding case when it held that evidence of the existence of substantial competition—that is injured or clearly threatened with injury to a substantial extent—is an essential prerequisite to an exercise of jurisdiction by the Commission.<sup>20</sup>**

While the Commission prefers not to put the matter thus baldly, the only possible intendment of the argument, on pages 24-8 of its brief, is that this Court should now reverse itself because the Commission thinks this Court rendered an incorrect decision in the preceding

20—*Federal Trade Commission v. Rafadam Company*, 283 U. S. 643, 651.

case when it held that evidence of the existence of substantial competition—that is injured or clearly threatened with injury to a substantial extent—is an essential prerequisite to an exercise of jurisdiction by the Commission. The Commission attempts to soften the harshness of its request in this regard with the statement that “the views expressed [by this Court] in that connection may be regarded as unnecessary” (Commission’s brief, p. 28).

Suffice it to say that a reading of this Court’s opinion in the preceding case requires the conclusion that not only was such holding *necessary* to the decision, but it was the principal basis thereof. This being so, we would feel presumptuous, to say the least, if we were to undertake a lengthy defense of the validity of such a well reasoned opinion, in which the Court carefully considered and passed upon the very contentions the Commission is again advancing herein.

## CONCLUSION

In conclusion, then, it is submitted that the decision of the lower Court herein is correct, not only on the ground upon which it is based but on the additional grounds urged upon it by respondent, as aforesaid (*supra*, pp. 13-27 and 27-32).

It cannot be that an administrative tribunal, after unsuccessfully prosecuting a proceeding instituted by and before itself through the highest court in the land, can ignore all that has gone before, and start anew under the same statute against the same respondent, who has in no way changed his course of conduct, merely to bring forth additional evidence of the same kind and calibre as it produced, or which was available and it could have produced in the former proceeding. Certainly, under such circumstances, the respondent is entitled to the ordinary protection of the high principle of public policy that there shall be an end of litigation over a particular matter.

Furthermore, Section 5 of the Act expressly provides the procedure for adducing such additional evidence. It lays down the express conditions upon which the Commission shall be permitted to adduce it. Having availed itself of this procedure, albeit without success, the Commission has exhausted its remedies, and cannot, thus, patently circumvent the express provisions of the statute in the manner attempted herein.

In view of these considerations, it would seem that the principles of *stare decisis* and *res a'judicata*, so frequently applied by this Court in its decisions, furnish a

Compelling precedent for bringing any legal controversy to an end eventually, even though it be with the Commission, and respondent submits that this controversy has finally reached that stage.

Our judicial system has been built up on two fundamental concepts that are complementary, viz., (1) that every man is entitled to the "opportunity" of his day in court, and (2) that once he has been given such "ppportunity" his day is ended. It is submitted that these are concepts which must be preserved inviolate, if we are to continue to enjoy the benefits of a government of laws, instead of a government of men.

Respectfully submitted,

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Respondent.*

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*Of Counsel.*

## APPENDIX\*

"Fifth. Answering 'Paragraph Two' of the said complaint, respondent admits that it sells a medicinal preparation, in tablet form, for internal use by human beings, under the trade-name of Marmola Prescription Tablets. Respondent denies that, as is in said Paragraph Two charged, respondent commonly refers to said preparation

\*For the Court's convenience, respondent's answer to "Paragraph Two" of the Commission's complaint in the preceding case (Old Rec. pp. 8-12) referred to supra pp. 8-9, is set forth in this appendix verbatim. The references in brackets following most of the paragraphs of said answer are to the paragraphs of the Commission's amended complaint in the instant case in which it has again counted upon these same representations.

In addition it should be noted that the Commission on page 31 of its brief attempts to argue that the instant case and the preceding Raladam case "are based upon substantially different misrepresentations." The Commission argues that in the preceding case the misrepresentations "charged and found" were that "Marmola is based upon 'scientific research,' is a 'scientific' method for treating obesity, and may be used without danger of harmful physical consequences." The Commission then says: "In the present case, on the other hand, the principal misrepresentations charged and found are" (1) "that thyroid deficiency is the usual cause of excess fat"; (2) "that administration of thyroid is the customary and accepted treatment for obesity"; (3) "that Marmola is an efficacious remedy for this condition"; (4) "that respondent's advertising discloses all the material facts concerning Marmola properties and effects." That all of these alleged misrepresentations could have been "charged" in the preceding case appears not only from this appendix, but also from the opinion of the lower Court in the preceding case wherein, as to such alleged misrepresentations, it is said:

- (1) "Obesity is very commonly the result, at least in part, of hypothyroidism" (42 F. (2nd) 430, 434);
- (2) "Thyroid furnishes the recognized treatment [for obesity], approved by all physicians" (42 F. (2nd) 430, 435);
- (3) "There is no denial of the therapeutic effect of Marmola as a treatment for obesity" (42 F. (2nd) 430, 435);

With respect to (4), as has hereinbefore been pointed out, in footnote 10 on pages 8 and 9 of this brief, the Commission went to considerable trouble to prove conclusively that this representation was being made before and at the time of the preceding case (R. 651-9) (Exs. 43, 44, 45).



as an 'obesity cure,' and denies that, as is there charged, respondent 'alleges' that said preparation is useful and effective 'in dissolving and removing excess flesh of the human body.'

"Respondent says that it does not allege, advertise, or otherwise hold out, that the said 'Marmola Prescription Tablets' are useful for 'dissolving,' or in any similar manner 'removing,' anything from the human body. Respondent says that what respondent alleges, advertises, and holds out in respect of said Tablets, appears from the label on the box in which said Tablets are sold to a consumer, and from the small pamphlet that is inserted in each said box, which said box and pamphlet are mentioned in 'Paragraph Five' of the said complaint; and that the following *excerpts* from the label on the said box, and from the said pamphlet, show the *gist* of what respondent alleges, advertises, and holds out in respect of the said Marmola Prescription Tablets, to-wit:

" 'Marmola is recommended as a treatment for the reduction of excessive fat' (Label).

" 'We state here all of the ingredients of Marmola. We do this so that you may know just what you are taking, and your physician may know if you wish' (Pamph. p. 19).

" 'Formula

1 grain Extract Bladderwrack,  
1/2 grain Extract Phytolacca  
1/4 grain Extract Cascara Sagrada  
Rx. 87 Spec.

1/2 grain Desiccated Thyroid,  
1/4 grain Phenolphthalein,  
16/1000 min. Oleoresin Ginger,  
Po. Saccharum special,

3 grains Calcium Carbonate Precipitated,  
1/24 min. Methyl Salicylate,

2/24 min. Oil Anise,  
 1/24 min. Oil Sassafras,  
 Talc. Brown,  
 Ivory Black,  
 Aqua for Extracts,  
 Po. Burnt Umber,  
 Red Oxide of Iron,  
 Syrupus Simplex,  
 Lubricating Solution,  
 Aqua for Granulating,  
 Liquid Petroleum colorless.'

“ ‘Take one tablet after each meal and at bedtime, with enough water to swallow easily’ (Label; Pamph. p. 3).

“ ‘This treatment should be faithfully taken as directed, for 60 to 90 days in order to obtain the best results’ (Label).

“ ‘The right rule is to take Marmola until you reach normality. A table in this pamphlet tells your proper weight’ (Pamph. p. 15) [Par. *Fourteen* of Amended Complaint herein (R. 51)].

“ ‘Stop when you are satisfied; then if you start to gain again, take Marmola a while longer’ (Pamph. p. 15) [Par. *Fourteen* of Amended Complaint herein (R. 51)].

“ ‘Try not to miss a dose, for the cumulative effects are important’ (Pamph. p. 3).

“ ‘This dosage is not intended to lead to rapid reduction. It will rarely exceed 3 or 4 pounds a week’ (Pamph. p. 3).

“ ‘The rate of reduction differs with individuals. Habits also affect it’ (Pamph. p. 3).

“ ‘The time required differs with conditions. Some people need little, some much’ (Pamph. p. 15).

“‘Physicians in treating obesity often prescribe much larger doses of the Marmola factors. That is to hasten effects’ (Pamph. p. 4) [Par. *Eleven* of Amended Complaint herein (R. 49-50)].

“‘But the consensus of opinion is that the dosage we direct, if taken regularly, seems to best fit the average case’ (Pamph. p. 4) [Par. *Twelve* of Amended Complaint herein (R. 50)].

“‘The study has been to adapt it (i.e. the prescription) to the average case’ (Pamph. p. 19) [Par. *Twelve* of Amended Complaint herein (R. 50)].

“‘It (i.e. the prescription) is based on the opinion that a moderate rate of reduction serves the purpose best’ (Pamph. p. 19).

“‘Consult your own physician if you want special advice in any unusual condition. The Marmola prescription, made for the multitudes, considers the average person simply seeking to reduce. A physician, in extreme cases, might hurry the treatment. Or he might add certain factors. But that requires personal contact. If you desire more advice than we give in this book, get it from a man who can meet you. We do not prescribe in special cases by letter’ (Pamph. pp. 21-22) [Par. *Twelve* of Amended Complaint herein (R. 50)].

“‘If you are over-fat you probably have an under-active thyroid. Restoring that activity may mean much to you in other ways than fat reduction’ (Pamph. pp. 5-6) [Par. *Ten* of Amended Complaint herein (R. 49)].

“‘Many people with deficient thyroids gain fat whatever they do. Some are very active, some are small eaters. Yet they suffer the deformity of fat. Many people with over-active thyroids stay thin, however much they eat or rest. The object of Marmola is to help establish a normal gland condition’ (Pamph. pp.

11-12) [Par. *Thirteen* of Amended Complaint herein (R. 50-1)].

“ ‘The chief object of Marmola is to help correct thyroid deficiency. When that result shows in normal weight, it is well to stop Marmola’ (Pamph. p. 15) [Pars. *Thirteen* and *Fourteen* of Amended Complaint herein (R. 50-1)].

“ ‘You will probably find that the use of Marmola brings you new vim and vitality. That is because the thyroid influences other ductless glands. But our advisers do not recommend the taking of Marmola for that purpose after the weight becomes normal’ (Pamph. pp. 15-16) [Par. *Fourteen* of Amended Complaint herein (R. 51)].

“ ‘Excess fat may be consumed by certain activities, particularly gland activities’ (Pamph. pp. 10-11).

“ ‘The Marmola prescription contains desiccated thyroid taken from food animals. It is a concentrated food intended for weak thyroids, particularly when that weakness shows itself in obesity. The object is to restore a normal condition under which few people gain too much weight’ (Pamph. p. 11) [Pars. *Ten* and *Thirteen* of Amended Complaint herein (R. 49 and 50-1)].

“ ‘There is a time in starting Marmola when confidence is quite important. Gland conditions cannot be corrected over-night. Confidence should be based on the fact that Marmola contains the leading internal factor in fat reduction known to modern science. That factor is recognized the world over. No modern physician can reasonably dispute it. You have probably read articles by physicians in magazines, stating how an active thyroid affects fat’ (Pamph. pp. 12-13) [Par. *Eleven* of Amended Complaint herein (R. 49-50)].

“ ‘The chief purpose of Marmola is to feed and stimulate the thyroid gland, which controls the combustion of food in the body. It is also the main inspiration of other ductless glands. The object is to

aid in turning more food into energy and heat and less into fat, thus restoring a natural condition' (Pamph. p. 5) [Par. *Thirteen* of Amended Complaint herein (R. 50-1)].

" 'The makers of Marmola do not advise abnormal exercise or diet \* \* \* But there is no question that reasonable habits in these respects greatly aid results. No matter how the thyroid may be stimulated and the combustion of food increased it is possible to offset much of the benefit by too lazy habits and too much food. Marmola is intended to aid reduction without radical, dangerous, or unpleasant methods. This method is scientific. It embodies the chief factors, if not the only factors, employed by modern physicians for the purpose intended. That is, for correcting a thyroid deficiency \* \* \* But under-exercise and over-feeding naturally retard results. They may in extreme cases counteract them \* \* \* Avoid starches and sweets in excess \* \* \* Cut down fatty foods \* \* \* Chew all foods well, even your soups \* \* \* At every meal eat a little less than you need' (Pamph. pp. 6-10) [Pars. *Eleven* and *Thirteen* of Amended Complaint herein (R. 49-50 and 50-1)].

" 'If the use of Marmola tends to reduce the desire for fat-forming foods, or even your appetite, it is probably because those foods, being more largely turned into energy and heat, satisfy one more quickly' (Pamph. p. 9) [Par. *Thirteen* of Amended Complaint herein (R. 50-1)].

" 'The Marmola prescription is based on years of work here and abroad by scientists in the field of glandular therapy. Reports of this research work show that results were first proved on thousands of test animals, then on human beings. Marmola itself has been proving them for 20 years to countless men and women. The results and the reasons for them are well understood in the scientific world today' (Pamph. p. 8) [Pars. *Eleven* and *Twelve* of Amended Complaint herein (R. 49-50)].

“ ‘Marmola contains the leading internal factor in fat reduction known to modern science. That factor is recognized the world over. No modern physician can reasonably dispute it’ (Pamph. p. 12) [Pars. *Ten* and *Eleven* of Amended Complaint herein (R. 49-50)].

“ ‘Millions of men and women in the past few years have escaped the deformities of fat. That fact is largely due to the factors in Marmola, either taken in this way or on physicians’ prescriptions. This form of treatment is recognized by authorities the world over’ (Pamph. p. 14) [Pars. *Eleven* and *Twelve* of Amended Complaint herein (R. 49-50)].

“ ‘The main results are not direct, but they come through changing wrong conditions and tendencies’ (Pamph. p. 5) [Par. *Thirteen* of Amended Complaint herein (R. 50-1)].

“ ‘It is found that many have the idea that Marmola does something to destroy fatty tissue. On that account, many people fear that it may be harmful. It might be if it did that, but it does not’ (Pamph. p. 10) [Pars. *Ten* and *Eleven* of Amended Complaint herein (R. 49-50)].

“Respondent says that in said pamphlet (pp. 25-26) are printed two tables, taken from the World Almanac and Encyclopedia for 1922, which tables show average weights of men and of women, respectively, of various heights and ages [Par. *Fourteen* of Amended Complaint herein (R. 51)].



# SUPREME COURT OF THE UNITED STATES.

No. 8264—OCTOBER TERM, 1941.

Federal Trade Commission, Petitioner,	} On Writ of Certiorari to	
vs.		the United States Circuit
Raladam Company.		Court of Appeals for the Sixth Circuit.

[April 27, 1942.]

Mr. Justice BLACK delivered the opinion of the Court

The Circuit Court of Appeals set aside a cease and desist order of the Federal Trade Commission upon the ground that certain findings were not supported by evidence. 123 F. 2d 34. The refusal of the court to enforce the Commission's order rested in part upon an interpretation of this Court's decision in a prior controversy between the same parties. *Fed. Trade Comm. v. Raladam Co.*, 283 U. S. 643. Because of the importance of questions raised, we granted certiorari.

Section 5 of the Federal Trade Commission Act, 38 Stat. 719, 15 U. S. C. § 45, declares unfair methods of competition in commerce to be unlawful; empowers the Commission to prevent such methods; and authorizes the Commission after hearings and findings of fact to issue orders requiring violators "to cease and desist from using such method of competition." In 1929, the Commission, after hearings, found that the Raladam Company had used unfair methods of competition in selling a preparation called Marmola by making misleading and deceptive statements concerning its qualities as a remedy for overweight. The Commission issued a cease and desist order which the Circuit Court of Appeals vacated. 42 F. 2d 430. This Court affirmed the Court of Appeals' judgment saying that there was "neither finding nor evidence from which the conclusion legitimately can be drawn that these advertisements substantially injured or tended to injure the business of any competitor or of competitors generally, whether legitimate or not. . . . It is impossible to say whether, as a result of respondent's advertisements, any business was diverted; or was likely to be diverted, from others engaged in like trade, or whether competitors, identified or unidentified, were injured in their business, or were likely to be injured, or, indeed,

whether any other anti-obesity remedies were sold or offered for sale in competition, or were of such a character as naturally to come into any real competition, with respondent's preparation in the interstate market." *Fed. Trade Comm. v. Raladam Co., supra*, 652-653. It is clear that the reasons for refusing to enforce the Commission's order are grounded upon the inadequacy of the findings and proof as revealed in the particular record then before this Court. Hence, these reasons are not controlling in this case, arising as it does out of different proceedings and presenting different facts and a different record for our consideration.

In 1935, the Commission instituted the present proceedings against Raladam, charging unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. Hearings were held and much evidence was heard concerning Raladam's trade methods since the date of the earlier cease and desist order. This time the Commission found with meticulous particularity that Raladam had made many misleading and deceptive statements to further sales of Marmola; that Marmola had many active rivals for the trade of those who were interested in fat-reducing remedies; that Raladam's misleading statements had the "tendency and capacity" to induce people "to purchase and use respondent's . . . preparation or medicine for reducing purposes . . . in preference to and to the exclusion of the products of competitors, . . . and to divert trade to respondent from such competitors engaged in the sale in interstate commerce of medicines, preparations, systems, methods, books of instruction, and other articles and means designed, intended and used for the purpose of reducing weight."

These findings were an adequate basis for the Commission's order. The court below, however, was of the opinion that there was no substantial evidence to support the finding that the alleged unfair methods "substantially injured or tended to injure the business of any competitor." The evidence shows that sales of Marmola to the consuming public are made at retail drug stores throughout the country; that Raladam distributes Marmola both to wholesalers and retailers; that the wholesalers and retailers who sell Marmola also sell numerous other remedies for taking off fat; that the essential fat-reducing element in Marmola is ~~desiccated~~ thyroid, which is also an element in some of the other remedies sold to the public with or without doctors' prescriptions; that many books of instruction on methods of reducing weight are sold

*desiccated*

in interstate commerce; and that the gross sales of Marmola were from \$350,000 to \$400,000 a year. From this and other evidence the Commission concluded that numerous antifat remedies were offered for sale in the same market as Marmola, and that Marmola was in active competition with them for the favor of the remedy purchasing public.

It is not necessary that the evidence show specifically that losses to any particular trader or traders arise from Raladam's success in capturing part of the market. One of the objects of the Act creating the Federal Trade Commission was to prevent potential injury by stopping unfair methods of competition in their incipency. *Fashion Guild v. Trade Comm'n.*, 312 U. S. 457, 466. And when the Commission finds as it did here that misleading and deceptive statements were made with reference to the quality of merchandise in active competition with other merchandise it is also authorized to infer that trade will be diverted from competitors who do not engage in such "unfair methods." *Federal Trade Comm. v. Winsted Co.*, 258 U. S. 483, 493. The findings of the Commission in this case should have been sustained against the attack made upon them.

Raladam contends here as it did before the Commission and the Circuit Court of Appeals that the judgment of this Court in the first case makes the issues here in controversy *res judicata*, and therefore bars these proceedings. It also contends that the denial by this Court and the Circuit Court of Appeals in the earlier proceedings of the Commission's motion to offer additional evidence with respect to competitors and injury to competition should have a like effect. We think these contentions are without merit, and therefore agree with the court below in its determination that a decision on the merits was appropriate.

The respondent has not sought in this Court to sustain the judgment of the court below on any other ground. Accordingly, the judgment is reversed with directions that the order of the Federal Trade Commission be affirmed.

*It is so ordered.*

A true copy.

Test:

Clerk, Supreme Court, U. S.